



Law and Emergencies: A Comparative Overview

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Researchers: Ilana Gimpelson, George Karavokkyris, Ido Lachman, Dr. Guy Lurie, Magdalena Pacholska, Talia Shwartz, Adv., Yonatan Orpeli

Senior researchers: Prof. Amnon Reichman, Prof. Eli Salzberger, Prof. Gad Barzilai and Prof. Deborah Shmueli

Editors and researchers: Anat Cabili, Adv. and Dr. Michal Ben Gal

Emergency Laws and Regulations in Poland: Executive Summary

Legislative Framework

The Constitution of the Republic of Poland defines three types of extraordinary measures: Martial Law, a State of Emergency and a State of Natural Disaster. It also establishes the governing principles regulating these emergencies such as proportionality; exceptionality (state of emergency as a 'last resort'), legality (extraordinary measures shall be regulated in statutes), and others. Accordingly, several specific statutes regulate emergencies, including Martial Law Act, State of Emergency Act and State of National Disaster Act. Further regulations are set by the Act on Compensation of Losses Caused by Limitations of Rights and Freedoms under Emergency Measures, Strategic Reserves Act and laws adjusting the Polish Legal System to the EU regulations on critical infrastructure.

Entrance into a State of Emergency

While a generic "emergency" is not specifically defined, in the case of threats to the constitutional order of the State, to security of the citizenry or public order, the president may introduce a state of emergency in a part of or upon the whole territory of the State, for an initial period of no more than 90 days; The President declaring an emergency is subjected to a request by the Council of Ministers – and the order introducing an emergency must be presented to the Sejm (legislature) within 48 hours. If not revoked by Sejm, the order has to be published and the Minister of Foreign Affairs is obliged to notify the UN Secretary General and the Secretary General of the Council of Europe that a state of emergency has been introduced. The State of Emergency lapses when the time for which it was declared passed.

Legal Powers

It is a general rule of all Emergency Measures Acts that the State organs shall act within their regular capacity, unless a certain variation is specifically provided for in the regulations. As elaborated upon below, relevant acts set forth many extraordinary prerogatives. Under Marital Law, the President may issue orders having the force of statutes in matters aiming at the swiftest restoration of conditions allowing for the normal functioning of the State. The President may also issue binding orders to the public authorities, appoints the Commander-in-Chief of the Armed Forces who reports to him, determines the responsibilities of the Armed Forces and approve their operational plans. The Council of Ministers may determine the rules of the public administration functioning in the war zones or suspend the functioning of civilian authorities and transfer their powers to the military authorities or appoint a governmental commissary to replace them. In a generic emergency, the President, at the request of the Prime Minister, may decide to use contingents and detachments of the Polish Armed Forces to restore the normal functioning of the State if the forces and means used thus far have been exhausted.

Rights in a State of Emergency

Due to its history, Poland's new Constitution of 1997 contains an emergency-tailored 'constitution within a constitution' mechanism, reflecting a commitment to the preservation of the fundamental principles of democracy even in times of crisis. While the provisions regarding the scope of rights limitations during the emergency are constructed differently, there are three features common to all. First, no limitation can be imposed in a discriminatory manner. Second, the imposed limitations apply to all natural and legal persons residing, temporarily staying or registered within the area on which the emergency measure was introduced. Lastly, non-compliance with the imposed limitations may result in criminal liability.

Emergency Laws and Regulations in Poland: Synopsis

Introduction

Poland has a very detailed and comprehensive regulatory framework for emergency measures. Its structure, designed to ensure the proper check and balances system even in the time of crisis, is a reaction to the two-year long martial law, illegally introduced in the early eighties under the Constitution of the Polish People's Republic.¹ To prevent the delinquent use of the emergency powers for political reasons in the future, the new Constitution of the Republic of Poland of 1997 contains an emergency-tailored 'constitution within a constitution' mechanism, reflecting a commitment to the preservation of the fundamental principles of democracy even in times of crisis.² The mechanism has not been tested yet, but some commentators have pointed out that the envisaged procedures might be too time consuming to provide a robust response under the arduous and fast-paced circumstances.³

1. The Legislative Framework

The fundamentals of the emergency laws have been laid down in Chapter XI of the 1997 Constitution, which sets forth three types of extraordinary measures: Martial Law, a State of Emergency and a State of Natural Disaster⁴ and establishes six principles regulating them:⁵

1. Principle of exceptionality (subsidiarity) – emergency measures are a last-resort solution and can be introduced only under the exceptional circumstances of a 'particularly grave threat', when the regular constitutional measures are insufficient;
2. Principle of legality – an emergency measure may be introduced only upon the basis specified in the relevant statute; state organs can only exercise competences specifically given to them in the statutes (no implied powers); loss of private property caused by the organs of the state during the state of emergency shall be compensated when the emergency ceases;
3. Principle of proportionality – the scope and intensity of the State actions shall be adequate to the degree of threat;

¹ Judgement of the Constitutional Tribunal of 16 March 2011 (sygn. akt K 35/08 Journal of Laws of the Republic of Poland No. 64, item 342).

² The Constitution of the Republic of Poland, adopted on 2 April 1997 (Journal of Laws of the Republic of Poland No. 78, item 483).

³ Tadeusz Bryk, The Review of Emergency States Regulations in the Polish Constitution, 1 *Przegląd Prawa Konstytucyjnego*, 234 (2011); Bartłomiej Opalinski, Martial Law under Contemporary Polish Legal System, 7-8 *Przegląd Prawa Publicznego*, 16 (2011).

⁴ FN2, The Constitution, Article 228.

⁵ Leszek Garlicki, *Polish Constitutional Law*, Liber Publisher, 402-404 (Warsaw 2008).

4. Principle of purpose limitation – all actions of the State organs shall be undertaken for the purpose of combating the threat and restoring the normal functioning of the state apparatus;
5. Principle of legal stability – for the duration of the Emergency Measure and a specified period after its termination, fundamental legal acts can be neither revoked nor amended (Constitution, Elections Acts, Emergency Measures Acts);
6. Principle of the political representation protection – for the duration of the state of emergency and a specified period after its termination, the term of office of the Parliament cannot be shortened, a nationwide referendum cannot be held and no elections can be organized.

The Constitution determines that all types of extraordinary measures shall be regulated in statutes. These are: Martial Law Act,⁶ State of Emergency Act⁷ and State of National Disaster Act.⁸ Emergency regulations are further supplemented by the Act on Compensation for Losses Caused by Limitations of Rights and Freedoms under Emergency Measures,⁹ Strategic Reserves Act¹⁰ and laws adjusting the Polish Legal System to the EU regulations on critical infrastructure.¹¹

⁶ Act on a State of Martial Law and on Competences of the Commander-In-Chief of the Armed Forces, adopted on 29th August 2002 (Journal of Laws of the Republic of Poland No. 156, item 1301).

⁷ Act on a State of Emergency, adopted on 21st June 2002 (Journal of Laws of the Republic of Poland No.113, item 985).

⁸ Act on a State of Natural Disaster, adopted on 18th April 2002 (Journal of Laws of the Republic of Poland No. 62, item 558).

⁹ Act on Compensation of Losses Caused by Limitations of Rights and Freedoms under Emergency Measures, adopted on 22 November 2002 (Journal of Laws of the Republic of Poland No. 233, item 1955).

¹⁰ Act on Strategic Reserves, adopted on 29 October 2009 (Journal of Laws of the Republic of Poland No. 229, item 1496).

¹¹ Act on Crisis Management, adopted on 26 April 2007 (Journal of Laws of the Republic of Poland No. 89, item 590) and supplementing orders. On EU law on critical infrastructure, see: Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection.

2. Declaration of a State of Emergency: A Table of Analysis

Martial Law

*measure to be applied as a response to the actions of external actors

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	How does a state of emergency end?
External threats to the State	Intentional actions of external actors, directed against the independence, territorial integrity or important economic interests of the Republic of Poland, as well as actions obstructing or preventing the normal functioning of the State apparatus. ¹²	According to Article 229 of the Constitution “[i]n the case of external threats to the State, acts of armed aggression against the territory of the Republic of Poland or when an obligation of common defence against aggression arises by virtue of international agreement, the President of the Republic may, upon request of the Council of Ministers, declare a state of martial law in a part of or upon the whole territory of the State.” The Council of Ministers identifies the causes for which the martial law is to be introduced and proposes the limitations to the rights and freedoms, proportional to the character of the threat. ¹³	The President terminates the Martial Law by the order issued upon request of the Council of Ministers when the threats cease and the regular functioning of the state has been restored. The Martial law can be also terminated by the decision of the Constitutional Tribunal. This is because the Presidential order introducing the Martial Law falls within the category of "legal provisions issued by central State organs" which conformity with the Constitution, ratified international agreements and statutes, the Tribunal has the power to adjudicate. In case the Tribunal finds a breach, the order becomes void. ¹⁸
Acts of Armed Aggression against the territory of the Republic of Poland	No official definition in the regulations, commentaries refer to Article 51 of the UN Charter as guidance for interpretation.	The President thereupon decides on the request and either issue an order introducing the martial law or refuses to do so. In case the order is issued, it has to be presented to the Sejm ¹⁴	
Obligation of	Implementation of		

¹² FN 6, Martial Law Act 2002, Article 2.1a.

¹³ Id.

¹⁴ Sejm is one of the two houses of the Polish parliament (a bicameral legislature).

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	How does a state of emergency end?
Common Defence against aggression arising by virtue of an international agreement	Article 5 of the North Atlantic Treaty obligation.	<p>within 48 hours. The latter has the competence to revoke the President’s order by an absolute majority of votes taken in the presence of at least half the statutory number of Deputies.¹⁵</p> <p>If not revoked, the order has to be proclaimed not only in the regular way (publication in the official journal) but also through: the local government, posters in the public places, mass media and other means considered sufficient in the region.¹⁶ Furthermore, Minister of Foreign Affairs is obliged to notify the UN Secretary General and the Secretary General of the Council of Europe that Martial Law has been introduced and for what reasons.¹⁷</p>	

¹⁸ FN2, The Constitution, Article 188.

¹⁵ FN 2, The Constitution, Article 231; FN 6, Martial Law Act, Article 3.

¹⁶ Id, Martial Law Act, Articles 4-5.

¹⁷ Id. Article 6.

State of Emergency

*measure to be applied as a response to actions of internal actors

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	How does a state of emergency end?
Threats to the constitutional order of the State	Neither the Constitution nor any act defines the phrase “threat(s) to the constitutional order of the State”. There appears to be however a consensus in the academia, that it denotes situations of internal coups and paralysis of the state apparatus to a degree which threatens the very existence of the state. ¹⁹	<p>In the case of threats to the constitutional order of the State, to security of the citizenry or public order, the President may, on request of the Council of Ministers, introduce for a definite period no longer than 90 days, a state of emergency in a part of or upon the whole territory of the State.²⁰</p> <p>The Council of Ministers identifies the causes for which the martial law is to be introduced and proposes the limitations to the rights and freedoms, proportional to the character of the threat.²¹</p> <p>The President thereupon decides on the request and either issue an order introducing the state of emergency or refuses to do so. The initial period for which the state of emergency is introduced cannot exceed 90 days. In case the order is issued, it has to be presented to the Sejm within 48 hours. The latter has the competence to revoke the President’s order by an absolute majority of votes taken in the presence of at least half the statutory number of Deputies.²²</p> <p>If not revoked, the order has to be proclaimed not only in the</p>	<p>The State of Emergency lapses when the time for which it was declared passed. The President may also terminate the State of Emergency earlier, by the order issued upon request of the Council of Ministers, when the threats cease and the regular functioning of the state has been restored.²⁶</p> <p>The State of Emergency can be also terminated by the decision of the Constitutional Tribunal. Similarly to the Martial Law, the</p>
Threats to security of the citizenry	Not defined in the regulations; literatures clarifies that security of the citizenry denotes not only		

¹⁹ Krzysztof Prokop, *Emergency Measures in the Constitution of the Republic of Poland*, Temida Publisher, 77 (Białystok 2005); Bogusław Banaszak, *Constitution of the Republic of Poland. Commentary*, C.H. Beck Publisher, 980 (Warsaw 2009).

²⁰ FN 2, The Constitution, Article 230.

²¹ FN 7, State of Emergency Act, Article 2.

²² FN 2, The Constitution, Article 231; State of Emergency Act, Article 3.

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	How does a state of emergency end?
	physical safety but has also economical security. ²⁸	regular way (publication in the official journal) but also through: the local government, posters in the public places, mass media, and other means considered sufficient in the region. ²³	Presidential order introducing the state of emergency can be adjudicated by the Constitutional Tribunal. ²⁷
Threats to public order	No definition found. Indefinite term designed as a catch-all category. ²⁹	<p>Furthermore, Minister of Foreign Affairs is obliged to notify the UN Secretary General and the Secretary General of the Council of Europe that a state of emergency has been introduced and for what reasons.²⁴</p> <p>The state of emergency can be prolonged only once, for additional 60 days, if the reasons for which it was introduced are still valid.²⁵</p>	

²⁶ Id. Article 8.

²⁸ Banaszak, p. 979.

²³ FN 7, State of Emergency Act, Articles 4, 6.

²⁴ Id. Article 7.

²⁵ FN 2, The Constitution, Article 230.

²⁷ FN 2, The Constitution, Article 188.

²⁹ FN 19, Banaszak, 980.

State of Natural Disaster

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	How does a state of emergency end?
Natural catastrophe ³⁰	An event resulting from processes of nature, in particular floods, earthquakes, fires, blizzards or droughts.	<p>In order to prevent or remove the consequences of a natural catastrophe or a technological accident exhibiting characteristics of a natural disaster, the Council of Ministers may introduce, for a definite period no longer than 30 days, a state of natural disaster in a part of or upon the whole territory of the State. An extension of a state of natural disaster may be made only with the consent of the Sejm.³¹</p> <p>The Council of Ministers might issue an order introducing the state of natural disaster on its own initiative or upon request of the governor (wojewoda) of the relevant region.³² It can be prolonged in the same way.</p> <p>The order identifies the causes for which the state of national disaster is to be introduced and proposes the limitations to the rights and freedoms, proportional to the character of the threat.³³</p> <p>The order has to be proclaimed not only in the regular way (publication in the official journal) but also through: the local government, posters in the public places, mass media and other means considered sufficient in the region.³⁴</p>	<p>State of Natural Disaster lapses when the time for which it was declared passed. The Council of Ministers may also terminate the State of Natural Disaster earlier, when the reasons for which it was introduced are no longer valid.³⁵</p> <p>The State of Natural Disaster can be also terminated by the decision of the Constitutional Tribunal, which can adjudicate the Council of Ministers’ order introducing the state of natural disaster.³⁶</p>

³⁰ Natural catastrophe or technological accident can be qualified as “natural disaster” only if their consequences caused, or if not prevented would cause, life or health risks to a large group of people, significant property losses or large-scale environmental damage.

³¹ Id. Article 232.

³² FN 8, State of Natural Disaster Act, Article 5(1).

³³ FN 8, State of Natural Disaster Act, Article 5(2).

³⁴ Id. Article 5(3) and (4).

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	How does a state of emergency end?
Technological accident ³⁷	Abrupt and unexpected damage or destruction of a building, machine or any other technical device placing them temporarily out of order or depriving them of their main features.		
Terrorist events	There is no specific legislation dealing solely with emergency arising from terrorist events. However, there is a separate section in all three statutes on emergency measures (Martial Law Act, ³⁸ State of Emergency Act ³⁹ and State of Natural Disaster Act ⁴⁰) explicitly stating that each of them can be introduced to provide a sufficient response to a terrorist event, including in cyberspace. It means that State authorities have the discretion to choose which emergency measure is the most suitable in the particular case, depending on what kind of terrorist event takes place or needs to be prevented. In the Polish legal system, “terrorism” is the action or omission committed (or threatened to be committed) with the aim of: ⁴¹ 1) seriously terrorizing a large number of people; 2) forcing a public authority of the Republic of Poland or another state or international organization, to take or not to take a certain course of action; 3) causing a serious disturbance in the political system or the economy of the Republic of Poland, or another state or international organization.		

³⁵ Id. Article 6(2).

³⁶ FN 2, The Constitution, Article 188.

³⁷ Natural catastrophe or technological accident can be qualified as “natural disaster” only if their consequences caused, or if not prevented would cause, life or health risks to a large group of people, significant property losses or large-scale environmental damage.

³⁸ FN 6, Martial Law Act, Article 2(1).

³⁹ FN 7, State of Emergency Act, Article 2(1).

⁴⁰ FN 8, State of Natural Disaster Act, Article 3(2).

⁴¹ Criminal Code of the Republic of Poland, adopted on 6 June 1997 (Journal of Laws of the Republic of Poland No.88, item 553), Article 115(20).

3. Legal Powers

(Before the emergency)

All emergency measures might be introduced before the emergency actually takes place (see the wording of the conditions above: it is either 'in case of the threat' or 'to prevent'). Therefore, in principle, special powers conferred mostly to the executive branch, can be exercised equally before and during the emergency, as long as the relevant type of measure has been duly introduced. That said, it should be noted that there is a separate set of regulations in force which would come into play before various types of emergencies, as defined above – the Crisis Management Act and orders supplementing it.⁴² When the Act was proposed, it was contentious whether it did not attempt to sidestep the complicated Emergency Measures legislation by, inter alia, bypassing the Presidential prerogatives, to concentrate all powers in the Council of Ministers. A conclusion has been reached, however, that 'crisis management' by the public authorities in the form envisaged in the adopted version of the Act (consisting mainly of planning, training and ensuring effective communication) remains within the regular constitutional measures and is thus a normatively distinctive category from the emergency measures regulations.⁴³

(During the emergency)

It is a general rule of all Emergency Measures Acts that the State organs shall act within their regular capacity, unless a certain variation is specifically provided for in the regulations. As will be elaborated upon below, the relevant acts set forth many extraordinary prerogatives, but in case of any doubt, no State organ can claim any implied power. Before elaborating on the issue any further, it needs to be noted that Poland has a three-tiered administrative system consisting of provinces (województwo), counties (powiat) and municipalities (gmina). The local government is based upon the principle of "decentralization of public authority in accordance with the principles of subsidiarity" and "independent status of local government units".⁴⁴ Emergency regulations however, provide numerous exceptions to those principles. During the times of emergency, the local government units in the area on which one of the emergency measures were introduced, are subject to a unified chain of command exercised by: the Minister of National Defence

⁴² Act on Crisis Management, adopted on 26th April 2007 (Journal of Laws of the Republic of Poland No.89, item 590).

⁴³ Marek Dobrowolski, Legal Opinion on the conformity of the Crisis Management Bill with the Constitution, *Sejm Bureau of Research*, 1-7 (262/07).

⁴⁴ Jerzy Regulaski, *Local Government Reform in Poland: an Insider's Story*, Local Government and Public Service Reform Initiative, Open Society Institute–Budapest, 104 (2003).

(Martial Law),⁴⁵ the Prime Minister or relevant governor (State of Emergency),⁴⁶ the Minister of Interior or relevant head of the particular administrative unit (State of National Disaster).⁴⁷ If the local authorities do not comply with the orders or their actions are ineffective, they can be suspended and replaced by a governmental commissary.

Type of the emergency measure	Powers	Who is the power conferred to?	Power exercised vis-à-vis	Conditions to be met when exercising the power
Martial Law	<p>The President may issue orders having the force of statutes in matters aiming at the swiftest restoration of conditions allowing for the normal functioning of the State.⁴⁸</p> <p>The President also issues binding orders to the public authorities, appoints the Commander-in-Chief of the Armed Forces who reports to him, determines the responsibilities of the Armed Forces and approve their operational plans and designates parts of the country as war zones.⁴⁹</p> <p>The Council of Ministers may determine the rules of the public administration functioning in the war zones or suspend the functioning of civilian authorities and transfer their powers to the military authorities or appoint a governmental commissary to replace them.⁵⁰</p>	The Executive branch; chiefly the President and the Council of Ministers (or the Prime Minister, if the Council cannot convene)	<p>The Sejm (legislative)</p> <p>The Armed Forces</p> <p>Civilian administrative organs (on governmental and local level)</p>	<p>Only when the Sejm is unable to assemble for a sitting.⁵¹</p> <p>Most of the President's prerogatives can only be exercised upon the request of the Council of Ministers or the Prime Minister acting in its name.⁵²</p> <p>All actions undertaken must remain in compliance with the six principles laid down in Article 228 of the Constitution (see 'the legislative framework' subsection above).</p>

⁴⁵ FN 6, Martial Law Act, Article 12.

⁴⁶ FN 7, State of Emergency Act, Article 12.

⁴⁷ FN 8, State of Natural Disaster Act, Articles 10 and 11.

⁴⁸ FN 2, The Constitution, Article 234.

⁴⁹ FN 6, Martial Law Act, Article 10.

⁵⁰ Id. Articles 11 and 14.

Type of the emergency measure	Powers	Who is the power conferred to?	Power exercised vis-à-vis	Conditions to be met when exercising the power
State of Emergency	<p>The rules on the usage of firearms by the Police (both individual officers and police units) are substantially loosened. Firstly, while the warning shouts and warning shot are still in principle required, police officers are not obliged to fire in a way that will, to the extent possible, cause only minimal harm to bodily integrity or to property, as they normally are.⁵³ Secondly, the firearms can be used by tactical formations of police forces,⁵⁴ which is explicitly prohibited in regular times when no emergency is declared.⁵⁵ Lastly, in cases when a real and imminent danger to the life or bodily integrity of the police officer or another person exists, an order to use firearms might be given by the commander of the unit (no prior authorization of the Inspector General is necessary).⁵⁶</p> <p>The President, at the request of the Prime Minister, may decide to use contingents and detachments of the Polish Armed Forces to restore the normal</p>	<p>The Prime Minister - if the state of emergency has been introduced for more than one province (województwo) or the governor of the relevant province (if the state of emergency had been introduced for only one province). The President has a limited role</p>	<p>People and property. To some extent also against civilian administrative organs (on regional and local level).</p>	<p>The Prime Minister is obliged to promptly inform the President on all kinds of actions undertaken following the introduction of the State of Emergency, and their consequences.⁶¹ The obligation extends to informing the relevant Rector if any actions are conducted in the university premises.</p> <p>All actions undertaken must remain in compliance with the six principles laid down in Article 228 of the Constitution (see 'the legislative framework' subsection above).</p>

⁵¹ FN 2, The Constitution, Article 234.

⁵² Id. Article 10.

⁵³ During the normal times, the use of firearms by Police, and all other armed services is regulated by the Act on the Use of Force and Firearms, adopted on 24th May 2013 (Journal of Laws of the Republic of Poland No.628, item 1165). The minimal harm rule is codified in Article 6(1). Article 10a(3) of State of Emergency Act regulating the use of force and firearms by the Police during the emergency does not contain a similar limitation.

⁵⁴ FN7, State of Emergency Act, Article 10a(1).

⁵⁵ Act on the Use of Force and Firearms, Article 46.

⁵⁶ FN 7, State of Emergency Act, Article 10a(2).

Type of the emergency measure	Powers	Who is the power conferred to?	Power exercised vis-à-vis	Conditions to be met when exercising the power
	<p>functioning of the State if the forces and means used thus far have been exhausted. They are subject to the same rules on the use of firearms as the police officers.⁵⁷</p> <p>If local or regional civilian authorities do not discharge their duties effectively, the Prime Minister may suspend their functioning and appoint a governmental commissary to replace them.⁵⁸</p> <p>The armed services are allowed to enter university grounds if necessary, without the permission or the request of the rector.⁵⁹</p> <p>A relevant minister or the governors of the provinces gain the competence to introduce various limitations to the rights and freedoms (see in detail the list in the subsequent subsection).⁶⁰</p>	<p>during the State of Emergency, consisting mainly of the right to decide on the use of the Armed Forces.</p>		

⁶¹ FN 7, State of Emergency Act, Article 10.

⁵⁷ Id. Article 11.

⁵⁸ Id. Article 12.

⁵⁹ Id. Article 13. The issue of armed services access to the university grounds might sound trivial but has been regulated in the Act for historical reasons. In 1968, a massive student and intellectual protests against the government of the People's Republic of Poland took place in all major university premises throughout the country. The socialist authorities replied to the protests with the anti-Semitic and anti-Zionist campaign, since at the time, vast number of the academics were of Jewish origin. "March events", as they are referred to in Poland, were ultimately brutally suppressed and resulted in a mass emigration of many prominent figures. The memory of those events is still alive in the academic society, which successfully lobbied for a law that bans any armed services officers from entering university grounds. See more in Higher Education Act, adopted on 27th July 2005 (Journal of Laws of the Republic of Poland No.164, item 1365), Article 227.

⁶⁰ Id.State of Emergency Act, Article 22(3).

Type of the emergency measure	Powers	Who is the power conferred to?	Power exercised vis-à-vis	Conditions to be met when exercising the power
State of Natural Disaster	<p>Units of fire and rescue brigades, emergency medical services and all armed services designed to prevent the natural catastrophe or remove its consequences, acts under the overall management of the head of the administrative unit in which the emergency has been declared.⁶²</p> <p>The Minister of National Defence, at the request of the governor, may decide to use contingents and detachments of the Polish Armed Forces to prevent the natural disaster or remove its consequences if the forces and means used thus far have been exhausted. They remain under the military chain of command.⁶³</p> <p>Heads of the administrative units gain the competence to introduce various limitations to the rights and freedoms (see the list in the sub-section below).⁶⁴</p>	Minister of Interior or relevant head of the particular administrative unit	People and property	All actions undertaken must remain in compliance with the six principles laid down in Article 228 of the Constitution (see 'the legislative framework' sub-section above).

⁶² FN 8, State of Natural Disaster Act, Articles 9-11.

⁶³ Id. Article 18.

⁶⁴ FN 8, State of Natural Disaster Act, Article 23.

4. Rights in a State of Emergency

The ground rules on rights during emergencies have been set forth in Article 233 of the Constitution. As the provisions regarding the scope of limitations during the emergency measures are constructed differently, they are commented upon separately. There are nonetheless three features common to all of them. Firstly, no limitation can be imposed in a discriminatory manner.⁶⁵ Secondly, the imposed limitations apply to all natural and legal persons residing, temporarily staying or registered within the area on which the emergency measure was introduced.⁶⁶ Thirdly, in compliance with the imposed limitations can result in criminal liability; the penalties range from a fine to an arrest.⁶⁷

The Martial Law and the State of Emergency have a common constitutional framework of rights and freedoms' limitations. It is set forth in the first paragraph of Article 233 according to which:

“The statute specifying the scope of limitation of the freedoms and rights of persons and citizens in times of martial law and states of emergency shall not limit the freedoms and rights specified in Article 30 (the dignity of the person), Article 34 and Article 36 (citizenship), Article 38 (protection of life), Article 39, Article 40 and Article 41, para.4 (humane treatment), Article 42 (ascription of criminal responsibility), Article 45 (access to a court), Article 47 (personal rights), Article 53 (conscience and religion), Article 63 (petitions), as well as Article 48 and Article 72 (family and children)”
[wording of the original translation, emphasis added].

The Constitution sketches the boundaries by a negative clause, which lists non-derogatory rights. All other rights and freedoms can therefore either be suspended or limited.⁶⁸

⁶⁵ FN 2, The Constitution, Article 233(2) [provides that “Limitation of the freedoms and rights of persons and citizens only by reason of race, gender, language, faith or lack of it, social origin, ancestry or property shall be prohibited.”]

⁶⁶ FN 6, Martial Law Act, Article 18; FN 7, State of Emergency Act, Article 15; FN 8, State of Natural Disaster Act, Article 20.

⁶⁷ Id. Martial Law Act, Articles 31-34; Id. State of Emergency Act, Articles 23-24; Id. State of Natural Disaster Act, Articles 27-28.

⁶⁸ FN 5, Garlicki, 407 and 411; FN 19, Banaszak, 990.

Martial Law

The Martial Law Act allows for numerous restrictions of rights and freedoms guaranteed during regular times:

- All kinds of protests may be prohibited;⁶⁹
- An individual suspected of being involved in activities directed against the public order and security, as well as all his movable and immovable property might be searched; objects deemed to be used in such activities can be seized;⁷⁰
- All mass media, correspondence and communication can be censored. Mail can be seized and phone conversation can be interrupted. Censorship regulations do not apply to religious groups and congregations as long as the communication is directly related to their religious functions;⁷¹
- Public assemblies and mass events can be banned. That includes registered societies, associations, political parties and unions, but does not apply to religious groups and congregations in places traditionally used for that purpose;⁷²
- Restrictions on education, including universities and professional training apart from religious seminaries can be introduced;⁷³
- Freedom of movement and choice of the place to live might be restricted; an obligation to carry identity cards in public places might be imposed;⁷⁴
- Requisition of commodities at fixed prices can be ordered and reinforced by the regulation of the free market economy (prohibition or obligation to conduct certain business/agricultural activities, limitations on currencies and stock exchange);⁷⁵
- Management of the corporations deemed particularly important for the military potential of the country might be taken over by the governmental representative;⁷⁶
- Restrictions on firearms possession (either in the form of the prohibition to carry a gun or by the obligation to deposit it at the

⁶⁹ FN 6, Martial Law Act, Article 19.

⁷⁰ Id. Article 20.

⁷¹ Id. Article 21.

⁷² Id. Article 22.

⁷³ Id. Article 24.

⁷⁴ Id. Article 23.

⁷⁵ Id. Articles 24 and 25.

⁷⁶ Id. Article 25a.

local authorities) might be introduced;⁷⁷

- Private property might be seized for military use, civilians might get additional tenants by an administrative decision (in case of a need to relocate parts of the population);⁷⁸
- Control of land, air and sea traffic, requisition of all means of transport for military use can be ordered;⁷⁹
- The cross-border traffic for people and goods might be restricted or suspended. Regulations on issuing travel documents for Polish citizens and residence permits for aliens might be altered;⁸⁰
- All people between the ages of 16 and 65, physically fitted might be assigned mandatory work, unless personal and or family duties prevent them from doing so.⁸¹

State of Emergency Act

The scope of limitations of the freedoms and rights during the State of Emergency is almost identical to the ones permitted under the Martial Law, as described above. Two variations need to be identified. First, public authorities are not allowed to take over the (interim) management of the corporations deemed particularly important for the military potential of the country, which does not come as a surprise in light of the situations in which the State of Emergency can be introduced, namely particularly intensive internal disturbances. To effectively combat them, the Constitution equipped the executive with a far more useful tool – administrative detention (internowanie or odosobnienie).⁸²

Article 17 of the State of Emergency Act permits the temporal deprivation of the liberty of persons over the age of 18 (and in certain circumstances over 17) against whom a reasonable suspicion arises that if not isolated, might engage in activity directed against the constitutional order of the State, public safety or security of the citizenry. Administrative detention might be also used to prevent the commitment of an offence or the escape from the crime scene. The measure cannot be used against a person protected by the

⁷⁷ Id. Martial Law Act, Article 24(1)(6).

⁷⁸ Id. Article 25(1).

⁷⁹ Id. Articles 26 and 27.

⁸⁰ Id. Article 28.

⁸¹ Id. Article 29.

⁸² Literally, the measure at hand translates as 'isolation' or 'internment'. However, the term 'administrative detention' better reflects its nature, and avoids confusion with interned belligerents under 1910 Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land. See e.g. Chapter II pertaining to standards and conditions of internment.

immunities.⁸³

The decision to administratively detain an individual can be taken only by the governor of the province in which the individual resides or sojourns, but the initial impulse to commence the procedure needs to come from: the Office of the Public Prosecutor, Police, the Internal Security Agency, Border Guards, Military Police or the Military Counterintelligence Service.⁸⁴ It implies that the analyzed measure can only be ordered on an individual case-by-case basis, not en bloc against e.g. a particular group, and must cease as soon as the reasons for it cease to exist.⁸⁵ Any person administratively detained must be informed within 48 hours of the reasons why that measure has been taken and has the right to challenge it at the administrative court, which is obliged to deliberate on the issue within 7 days from receiving the complaint.⁸⁶ Administrative detention must take place in an officially recognized facility; regulations on temporary arrest apply *mutatis mutandis*.⁸⁷

State of Natural Disaster

Conversely to the constitutional regulations on limitations of rights and freedoms during the Martial Law and State of Emergency, the corresponding grundnorm for the State of Natural Disaster itemizes the rights which can be restricted. According to Article 233(3) of the Constitution:

The statute specifying the scope of limitations of the freedoms and rights of persons and citizens during states of natural disasters may limit the freedoms and rights specified in Article 22 (freedom of economic activity), Article 41, paras. 1, 3 and 5 (personal freedom), Article 50 (inviolability of the home), Article 52, para. 1 (freedom of movement and sojourn on the territory of the Republic of Poland), Article 59, para. 3 (the right to strike), Article 64 (the right of ownership), Article 65, para. 1 (freedom to work), Article 66, para. 1 (the right to safe and hygienic conditions of work) as well as Article 66, para. 2 (the right to rest). [The wording of the original translation, emphasis added].

⁸³ FN 7, State of Emergency Act, Article 17(1).

⁸⁴ Id. 17(4).

⁸⁵ Id. 17(5).

⁸⁶ Id. 17(6).

⁸⁷ Id. 17(8).

Chapter III of the State of Natural Disaster Act specifies that the above-listed rights and freedoms may be limited in a following way:

- Prohibitions or obligations to conduct certain business/agricultural activities might be introduced. The employers might be obliged to delegate the employees to support actions undertaken by public authorities to prevent or remove the consequences of a natural disaster;⁸⁸
- Requisition of and/or fixed prices on particular commodities can be ordered;⁸⁹
- Obligation to undertake a medical treatment and/or quarantine can be imposed;⁹⁰
- Obligation to use particular means and methods to destroy insects or other organisms which are harmful to cultivated plants or to animals, or to prevent harm to the environment can be introduced;⁹¹
- Order to empty the living quarters or premises used for commercial means and/or a complete evacuation of the particular area can be ordered;⁹²
- Organizing and participating in workers' strikes and/or public assemblies and mass events can be prohibited;⁹³
- Use of movable and immovable private property without the permission of the owner might be permitted;⁹⁴
- Use of all means and methods of transport can be regulated;⁹⁵
- Labour law, including the health and safety regulations, might be altered;⁹⁶
- Obligation to actively participate in rescue operations and providing first aid to the victims might be imposed.⁹⁷

⁸⁸ FN 8, State of Natural Disaster Act, Article 21(1)(1-3).

⁸⁹ Id. Article 21(1)(4, 4a, 4b).

⁹⁰ Id. Article 21(1)(5-6).

⁹¹ Id. Article 21(1)(7-9).

⁹² Id. Article 21(1)(10-13).

⁹³ Id. Article 21(1)(14, 17).

⁹⁴ Id. Article 21(1)(16).

⁹⁵ Id. Articles 21(1)(15) and 24.

⁹⁶ Id. Article 21(1)(18) and 21(2).

⁹⁷ Id. Article 22.

State liability

State liability for damages resulting from the limitations of rights and freedoms introduced during emergency measures has been regulated in the Compensation of Losses Act.⁹⁸ Under this piece of legislation, any losses (but not the benefits which could have been obtained had the damage not been suffered) caused by the limitations of rights and freedoms introduced during emergency measures must be remedied by the Treasury.⁹⁹ Only the losses resulting from the unilateral injured party or a third party fault are not covered by the Act in hand.¹⁰⁰ To obtain compensation, the injured party shall submit a compensation claim to the governor of the region in which the damage took place, who has 3 months to decide upon it.¹⁰¹ The injured party can appeal the governor's decision; in that case is to be decided by the judiciary under the procedure laid down in the Code of Administrative Proceedings.¹⁰²

⁹⁸ Act on Compensation of Losses Caused by Limitations of Rights and Freedoms under Emergency Measures, adopted on 22 November 2002 (Journal of Laws of the Republic of Poland No.233, item 1955).

⁹⁹ Id. Articles 2-3.

¹⁰⁰ Id. Article 3(2).

¹⁰¹ Id. Article 5.

¹⁰² Code of Administrative Proceedings, adopted on 14 June 1960 (Journal of Laws of the Republic of Poland No.30, item 168).