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The Evolution of Polish Legislation on Public Burdens in the Event of Martial Law

*Ewolucja polskiego ustawodawstwa w zakresie ciężarów
publicznych w przypadku stanu wojennego*

Introduction

The subject of this analysis is related to constitutional obligation to comply with burdens and duties. Burdens are contributions in kind, while “duties” refer to monetary contributions. The doctrine of administrative law assumes that public burdens (obligations) are duties imposed on individuals, which consist in providing something for the benefit of public administration. However, in contrast to the duty to pay public levies, i.e. taxes and charges, obligations refer to the duty to make a natural, non-monetary contribution for the benefit of a certain administrative aim, and the subject of these burdens (obligations) are either personal services or in-kind contributions. The former consist in the performance of certain works or services involving all kinds of human, physical and mental work, or in the indication of certain activities, of a different nature, to be carried out. The latter, on the other hand, consist in providing the administration with

certain goods for use or consumption, that is to say, in the provision of material means for a specific public undertaking.¹

Public duties understood in this way have a centuries-long tradition and are firmly rooted in the modern legal regulations in force on Polish soil. As to the reason for supplying the State with goods or services by imposing an obligation to bear public burdens, there are situations where, in order to meet a certain need, it is necessary to have at one's disposal a certain number of human hands and a certain number of material means, while the uniqueness and dynamism of the situation does not allow for looking for, hiring or buying them. This means that such a need can only be made by means of coercion and not by way of a contract. Thus, the basic form of imposing a public burden on administered entities, the subject of which are personal services and contributions in kind, is both an individual administrative act and an administrative decision, or, alternatively, a general act (regulation, order).

Obviously, as is apparent from the title adopted for the subject of this discussion, public burdens (personal services and in-kind contributions) will only be of interest to us in the context of one of the constitutional extraordinary measures in addition to a state of emergency and a state of natural disaster, namely martial law.²

However, before I move on to this discussion, it should be noted that apart from martial law, the duty to provide personal services and in-kind contribution also exists in the event mobilisation is announced or in wartime. In this way, we are dealing with three factual situations for which, in principle, different legal regulations are provided. Public burdens in the case of an announcement of mobilisation or during a war result directly from the constitutional obligation to defend the Homeland and serve directly for the defence of the State.³ In contrast, as I have mentioned, public burdens in the event of martial law derive their basis from an extraordinary situation regulated in Chapter XI of the 1997 Constitution.

This means that we are, in a way, dealing with two regimes relating to war situations. The first one, which is the subject of this analysis, assumes the possibility of introducing martial law without simultaneous announcement of mobilisation,

¹ See: M. Konarski, *Constitutional public burdens as part of the defence economy*, „Przegląd Prawno-Ekonomiczny” 2023, nr 2, pp. 79–100.

² See: idem, *Ciężary publiczne w sytuacjach konstytucyjnych stanów nadzwyczajnych*, „Przegląd Prawa Administracyjnego” 2020, vol. 3, pp. 83–109; M. Brzeziński, *Odrębność stanu wojennego od pozostałych stanów nadzwyczajnych*, „Studia Politologiczne” 2018, vol. 49, pp. 140–145.

³ According to Article 84 of the Constitution of the Republic of Poland, “everyone shall comply with public duties and burdens”, and Article 85(1) stipulates that “it shall be the duty of every Polish citizen to defend the Homeland”, the Constitution of the Republic of Poland of 2 April 1997, adopted by the National Assembly on 2 April 1997, adopted by the Nation in a constitutional referendum on 25 May 1997, signed by the President of the Republic of Poland on 16 July 1997, Journal of Laws No. 78, item 483.

or, all the more so, without real military action. Thus, it is closer to a state of threat that does not exist in the Polish Constitution. The second regime, the analysis of which will be carried out at a different time in another publication, assumes the obligation to provide personal services and in-kind contributions only in the event of a mobilisation or during a war.

Legal regulations on the duty to bear public burdens during martial law are of a general nature, as opposed to the regulations on the duty to bear public burdens in the event of a mobilisation or during a war.⁴ However, both in the past and under the current legislation in this respect, in the event of introducing martial law, the lack of regulations in this relating to this extraordinary measure may be supplemented by the application of detailed regulations provided for the period of mobilisation or war. In addition, it should be borne in mind that often the declaration of martial law may be accompanied or immediately followed by a declaration of mobilisation, not to mention the option where “wartime” precedes the imposition of martial law and the declaration of mobilisation. In such a situation, the regulations on personal services and in-kind contributions for the defence of the state will precede the similar ones provided for in the legislation on martial law.

State of research and methodology

The issues which are the subject of the present analysis have not yet been more extensively addressed in the scientific literature on the legal institution of martial law. In view of the above, they constitute another research thread in this subject enriching the hitherto scientific findings. Thus, the aim of the considerations undertaken in this article is a synthetic reconstruction of the evolution of legal norms regulating the rights and obligations of an individual in the scope of personal and material benefits in the event of the introduction of martial law on the territory of the country.

The following analysis would not be possible without a descriptive account of the basic legal solutions that took place in the course of the 18th–20th centuries, as well as reference to numerous archival sources cited, thanks to which the normative learning process broadens the research perspective.

⁴ These regulations include in particular the Regulation of the Council of Ministers of 5 February 2002 of duties for defence, *Journal of Laws* No. 18, item 1102; the Regulation of the Council of Ministers of 11 August 2004 on personal services and contributions in kind in the event mobilisation is announced and in wartime, *Journal of Laws* No. 203, item 2081; the Regulation of the Council of Ministers of 24 August 2007 amending the Regulation on personal services and contributions in kind in the event mobilisation is announced and in wartime, *Journal of Laws* No. 158, item 1109.

The order of analysis of individual legal phenomena is not accidental. First, the purpose of the considerations is general issues concerning martial law, which are to indicate its nature and essence. Then, only the main task is focused on and both the legal-material and procedural aspects related to particular legal norms are examined. The whole discussion is crowned with a synthetic conclusion which is the quintessence of the preceding remarks.

Martial law

The notion of martial law is of a modern nature and derives from French legal regimes defining the position of the commandant of a fortress during a siege, which, following their systematic unification in the subsequent years of the French Revolution, were adapted during the Napoleonic wars in many European countries, including Poland. However, worth mentioning are the provisions of the Constitution of May 3, 1791. Although the term “martial law” was not explicitly used there, one can find provisions concerning the use of the army in such a situation as well. According to these provisions, contained in Article XI: “The nation is bound to preserve its possessions against invasion; therefore all inhabitants are natural defenders of their country and its liberties. The army is only an extract of defensive regular force, from the general mass of national strength. (...) The army owes to the nation, to guard the frontiers against enemies, and to maintain public tranquillity within; in a word, it ought to be the strongest shield in the nation (...) This national force, therefore, shall be employed for the general defence of the country, for garrisoning fortresses, guarding frontiers, and assisting the civil power in the execution of the law against those that are refractory”.⁵

Between 1795 and 1918, i.e. during the period of the partitions of Poland, neither the Constitutional Act of the Duchy of Warsaw of 22 July 1807,⁶ nor the Constitutional Act of the Kingdom of Poland of 27 November 1815,⁷ contained provisions on martial law. This was due to the fact that at that time there was no need for regulations on threat for the security, let alone the sovereignty, of the Polish State, since the State did not exist. Nevertheless, it should be remembered that French legislation introduced three concepts: a state of peace, a state of war and a state of siege, and for the first time the issue of the application of extraordinary measures on Polish soil appeared during the period of the Duchy

⁵ The Government Act 3 of May, *Volumina Legum*, Vol. 9, Kraków 1889, p. 225.

⁶ The Constitution of the Duchy of Warsaw, Journal of Laws of the Duchy of Warsaw, vol. 1, No. 1, pp. I–XLVII (hereinafter: JLDW).

⁷ The Constitutional Act of the Kingdom of Poland of 27 November 1815, Journal of Laws of the Kingdom of Poland [hereinafter: JLPK], vol. 1, No. 1, pp. 50–103.

of Warsaw,⁸ and then these solutions were also in force in the Kingdom of Poland. After the fall of the November Uprising,⁹ the partitioning authorities, on the pretext of “securing the peace of the inhabitants”, declared martial law in the Kingdom of Poland on 26 June 1833, on the basis of the Tsar’s Decree of 11 (23) April 1833.¹⁰ The official declaration of martial law sanctioned the state that had existed in the Kingdom of Poland from September 1831. Martial law on the Polish lands incorporated into the Russian Empire was introduced twice more, namely in 1861¹¹ and 1905.¹²

After Poland regained independence, between 1918 and 1939 martial law was regulated in two successive constitutions and acts developing their provisions. For the first time, the constitutionalisation of special (extraordinary) measures was made in Poland in the Constitution of 17 March 1921,¹³ which provided that martial law could be imposed because of war (wartime).¹⁴ According to the Regulation of 16 January 1928,¹⁵ martial law could be introduced as a result of two interrelated premises. The first one was war (wartime), which repeated the content of the Constitution and probably meant actual military actions. The second one referred to the area covered by warfare, making the introduction of martial law conditional on the establishment of this area.

A different solution was adopted in the Constitution of 23 April 1935.¹⁶ According to it, martial law could be ordered in the event of the necessity to use the armed forces to defend the State, regardless of the situation that accompanied that use. Compared to the Constitution of 17 March 1921, the possibility of applying martial law was extended to include unspecified circumstances other than war.

The constitutional provisions of 1935 were supplemented a few months before the outbreak of World War II by the announcement of a new statutory regulation

⁸ The issues were discussed by the Council of State of the Duchy of Warsaw in the following sessions: 319th on 15 April 1809, 320th on 16 April 1809, 330th on 29 April 1809 and 347th on 21 May 1809, see: B. Pawłowski, T. Mencil (red.), *Protokoły Rady Stanu Księstwa Warszawskiego*, t. 2, cz. 1, Toruń 1965, pp. 226–233, 263 and 301.

⁹ See: M. Konarski, *The issue of military requisitions in the parliamentary debate during the November Uprising of 1830–1831*, „Historia i Polityka” 2022, nr 42, pp. 131–150.

¹⁰ JLKP 15, No. 57, pp. 225–229.

¹¹ On 2 (14) October 1861, martial law was introduced on the territory of the Kingdom of Poland, which was tightened by the Order of the Viceroy of the Kingdom of 15 (27) December 1863 on the introduction of military and police administration, JLKP 63, No. 207, pp. 439–451.

¹² On 10 November martial law was imposed again and it was lifted in seven governorates of the Kingdom as late as in 1908.

¹³ The Constitution of the Republic of Poland of 17 March 1921, Journal of Laws No. 44, item 267.

¹⁴ Extraordinary measures in the Second Polish Republic are discussed in more detail by P.K. Marszałek, *Prawo stanów szczególnych II Rzeczypospolitej*, „Studia Lubuskie” 2011, vol. 7, pp. 49–74.

¹⁵ The Regulation of 16 January 1928 on martial law, Journal of Laws 1928, No. 8, item 54.

¹⁶ The Constitutional Act of 23 April 1935, Journal of Laws No. 30, item 227.

on martial law.¹⁷ According to it, the President of the Republic of Poland declared martial law in the whole country or its part at the request of the Council of Ministers, adopted on the initiative of the Minister of Military Affairs.

As it is known, the commencement of warfare by Nazi Germany against Poland on 1 September 1939, which was the beginning of World War II, resulted in martial law being imposed on the entire territory of the Polish State by the Regulation of the President of the Republic of Poland of 1 September 1939 on martial law,¹⁸ which was formally repealed as late as in November 1945 by the Order of the Presidium of the State National Council.¹⁹

The Constitutional Act of February 19, 1947 on the system and scope of activity of the highest authorities of the Republic of Poland (the so-called Small Constitution)²⁰ stipulated that the scope of activity of the Council of State included, *inter alia*, the adoption of resolutions on the introduction of martial law. In accordance with the provisions of the so-called Small Constitution, the Council of State was competent to introduce martial law at the request of the Council of Ministers, and the relevant order of the Council of State had to be submitted to the Sejm at its nearest meeting for approval and expired if it was not submitted or if the Sejm refused to approve it.

The Constitution of the Polish People's Republic adopted by the Legislative Sejm on 22 July 1952²¹ stipulated that a decision to declare martial law may be made only in the event of an armed attack on the People's Republic of Poland, or when international agreements indicated the need for a joint defence against aggression. Such a decision was adopted by the Sejm, or, when the Sejm was not in session, by the Council of State. In addition, the Constitution provided that the Council of State could impose martial law on a part or all of Poland's territory, if required for reasons of national defence or security. For the same reasons, the Council of State could declare partial or universal mobilisation.

Setting aside historical and, in particular, political assessment, it should be pointed out the Council of State, when declaring martial law in Poland, stated that it was introduced "in view of the threat to the state and to the nation, in order to prevent further decline of social discipline and to create conditions for

¹⁷ The Act of 23 June 1939 on Martial Law, Journal of Laws No. 57, item 366.

¹⁸ The Order of the President of the Republic of 1 September 1939 on martial law, Journal of Laws No. 86, item 544.

¹⁹ The Order of the Presidium of the State National Council on lifting martial law, Journal of Laws No. 57, item 320.

²⁰ The Constitutional Act of 19 February 1947 on the system and scope of operation of the highest authorities of the Republic of Poland, Journal of Laws 1949 No. 57, item 447.

²¹ The Constitution of the Polish People's Republic adopted by the Legislative Sejm on 22 July 1952, Journal of Laws No. 33, item 232.

the effective protection of peace, and, as well as to ensure strict compliance with the law and respect for the principles of social coexistence”²²

According to Article 1(1) of the Decree on martial law,²³ it could be imposed on a part or all of the territory of the People’s Republic of Poland, if required for reasons of national defence or security. Martial law could be imposed on the whole of the territory of the State in the event of a threat to the sovereignty and independence of the Polish People’s Republic, or for reasons of State security in the event of a serious threat to or violation of peace and public order. Martial law could be imposed on a part of the territory of the Polish People for reasons of state security within the boundaries of one or more voivodeships, towns or *gmina* districts in the event of a serious threat to or violation of peace and public order in a given area.

After the political transformation that took place in Poland in 1989, the issues of martial law were first regulated in the Small Constitution of 1992,²⁴ which provided that in the event of external threat to the State, the President may impose martial law on part or all of the territory of the Republic of Poland, as well as announce a partial or universal mobilisation.

In the light of the provisions of Article 229 of the current Constitution of the Republic of Poland of 1997, the grounds for the introduction of martial law are 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 an international agreement. It should be noted that these grounds for declaring martial law coincide with grounds for declaring a state of war referred to in Article 116 of the Constitution of the Republic of Poland, which is intended to emphasise the close relationship between martial law and a state of war.²⁵

For the purpose of further discussion, I assume that “martial law”, as one of the extraordinary measures, may accompany a “state of war” and fall within “wartime”, it may also be introduced before the decision on a “state of war” and before the commencement of military action (before “wartime”) and continue afterwards. It consists in introducing certain modifications in the regulations concerning the functioning of State structures and the legal situation of citizens,

²² The Resolution of the Council of State of 12 December 1981 on introducing martial law for reasons of State security, Journal of Laws No. 29, item 155.

²³ The Decree on martial law of 12 December 1981, Journal of Laws No. 29, item 154.

²⁴ The Constitutional Act of 17 October 1992 on mutual relations between the legislative and executive authorities of the Republic of Poland and on local self-government, Journal of Laws No. 84, item 426.

²⁵ See: K. Prokop, *Stany nadzwyczajne w Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Białystok 2005, pp. 44–57.

obviously within the limits specified by the provisions of the Constitution of the Republic of Poland. The introduction of “martial law” creates conditions for various types of extraordinary activities, improving the functioning of the state, including the possibility of limiting freedoms and rights of persons and citizens, through the duty to bear various types of public burdens (personal services and in-kind contributions) for the State.

Personal services and in-kind services contributions during martial law

As I mentioned above, civilian duties (personal services and in-kind contributions) during periods of extraordinary measures, have a long legal tradition, dating back at least to the times of the Duchy of Warsaw. However, it was only with the rebirth of the Republic of Poland that the legislator made a modern regulation of this matter.

During the Polish-Bolshevik war, a number of legal acts regulating the subject and scope of wartime duties were announced. On 20 July 1920, the Council of State Defence authorised the administrative authorities to compel the population to carry out, for remuneration, personal works and provide *podvoda* and accommodation services,²⁶ necessary for loading, transporting, unloading and deploying the population and evacuated items from the areas evacuated in con-

²⁶ The most important legal regulations concerning these duties include: the Decree of 25 March 1809 on the distribution of the tax entitled: personal collection for the costs of fortifications, JLDW 2, No. 13, pp. 25–33; the Decree of 22 May 1810 on horses provided for *podvodas* and military personnel, JLDW 2, No. 18, pp. 195–212; the Decree of 5 July 1810 – the Regulations concerning quarters for the army JLDW 2, No. 20, pp. 261–270; the Decree of 28 July 1810 on the method of supplying needs in kind to warehouses, JLDW 2, No. 21, pp. 357–367; the regulation of 28 May 1817 concerning the provision of *podvodas* for the army, The Official Journal of the Voivodeship of Mazovia of 9 July 1817, No. 40, pp. 504–511, Jagiellonian Library, ref. No. 12152 I; the regulation of 24 May 1823 on *podvodas* supplied to the army, State Archives in Lublin, “Podwód dostarczania przepisy” [The regulations for the delivery of *podvodas*], fonds No. 22, ref. No. 908, cards 4–19 (hereinafter: SAL); the regulations on providing *podvodas* to the army by the citizens of the Kingdom of Poland needed during the translocation of these troops or because of other circumstances, SAL, “Podwód dostarczania przepisy” [The regulations for the delivery of *podvodas*], fonds No. 22, ref. No. 908, cards 94–116; the Resolution of the Administrative Council of the Kingdom of Poland of 25 July/6 August 1833 specifying the order and principles of providing *podvodas* for the army in the city of Warsaw, *Zbiór przepisów administracyjnych Królestwa Polskiego* [A Collection of Administrative Regulations of the Kingdom of Poland], part IV, vol. 2, Warsaw 1867, pp. 539–541 (hereinafter: CARKP); the Resolution of the Administrative Council of the Kingdom of Poland of 21 April/3 May 1864 imposing an additional accommodation fee on the owners of private houses in the city of Warsaw during martial law, CARKP IV/2, pp. 137–139.

nection with warfare.²⁷ Persons compelled in this way had rights resulting from the Act on Personal Wartime Services.²⁸

In the light of the aforementioned Regulation of the President of the Republic of Poland of 16 January 1928 on martial law,²⁹ the Commander-in-Chief had the right to issue regulations and orders with effect for the whole area under martial law or its part in matters of personal services and in-kind contributions, the forced withdrawal of people and property, and also handing over draught animals, carts, motor vehicles and bicycles for the purposes of State defence. He also had the right to strengthen the security service and to compel the local population to provide it as a personal service under the supervision of municipal and rural self-government bodies and the technical supervision of military authorities.

The Regulation of the Commander-in-Chief, irrespective of the civil and criminal liability of individual persons, either from among the local government bodies for the negligence of supervision or failure to carry out the orders of authorities and administrative bodies, or from among the population for failure to carry out the orders issued by these authorities or by local government bodies, or for the inadequate performance of the security service – resulted in the liability of the *gmina* district or village for damages and losses resulting from the negligence of these obligations by their local government bodies or their residents.

It should be added that the Minister of Internal Affairs had the power to determine, if necessary, the procedure under which a *gmina* district or a village could obtain the funds to compensate for damages and losses resulting from the regulations and orders of the Commander-in-Chief, by way of an appropriate levy or personal services.

According to Article 3 of the aforementioned Act of Martial Law of 1939, the provisions of Article 8 of the Act on a State Emergency of 1937 applied during martial law,³⁰ which provided in paragraph 2 that emergency regulations and orders may introduce duties (personal services and in-kind contributions) of the population, but not exceeding the scope of duties, reserved by regulations for the

²⁷ The Regulation of the State Defence Council of 20 July 1920 on the enforcement of personal services and in-kind contributions during evacuation, Journal of Laws No. 64, item 425; the implementing rules of the Minister of Internal Affairs to the Regulation of the State Defence Council of 20 July 1920 on the enforcement of personal services and in-kind contributions during evacuation, Journal of Laws No. 71, item 488; the Regulation of the State Defence Council of 6 August 1920 on the declaration of a state of siege, Journal of Laws No. 69, item 460.

²⁸ The Act of 25 July 1919 on personal wartime services, Journal of Laws No. 67, item 401.

²⁹ The Regulation of 16 January 1928 on martial law, Journal of Laws 1928, No. 8, item 54.

³⁰ The Act of 22 February 1937 on a State of Emergency, Journal of Laws No. 17, item 108.

army in time of war.³¹ Personal services could have the form of auxiliary services³² performed by the local population under the supervision of *gmina* authorities and their responsibility for damages and losses resulting from negligence of the duties when performing this service. Liability and the amount of compensation was to be determined by the voivodeship general administration authority, which could order its enforcement for the benefit of the injured party in an administrative procedure. The granting of this compensation did not violate the injured party's rights to claim further damages in court, and *gminas* were granted the right to make a return claim to the persons by whose fault the damage occurred.³³

After World War II, apart from the general provisions of the constitutional Acts of 1947 and 1952, the issues of martial law were not regulated in more detail in the form of the relevant statutory regulation. The only exception was the Regulation of the Council of Ministers of 17 July 1981,³⁴ which stipulated that during martial law, unless the Council of State decides otherwise, provision on personal services and in-kind contributions apply to extent provided for the announcement of mobilisation and during a war. This meant that in the event of the imposition of martial law, the provisions of that Regulation were to be applied to personal services and in-kind contributions to the extent that this did not exclude the application of the provisions resulting from the martial law Decree and its implementing rules.

As a result of the aforementioned Resolution of the Council of State of 12 December 1981, martial law was imposed in the Republic of Poland.³⁵ The martial law Decree introduced a number of obligations in the area of personal services

³¹ The Act on the Universal Duty to Provide Contributions in Kind of 30 March 1939, Journal of Laws No. 30, item 200; The Temporary Instruction of 29 August 1939 on determining the conditions and method of payment of remuneration for items contributed in kind, collected during mobilisation, war or when the interests of the State's defence so require, stated by the Resolution of the Council of Ministers, "Monitor Polski" No. 201, item 487.

³² See: The emergency regulation of the Minister of Internal Affairs of 1 September 1939 on the auxiliary security service, Journal of Laws No. 88, item 560. Cf. the Regulation of the Council of Ministers of 24 January 1939 on the duties of natural and physical persons, authorities and institutions concerning the preparation of the personnel of anti-aircraft and anti-gas defence in peacetime, Journal of Laws No. 10, item 54.

³³ In the light of the Regulation of the Head of the Department of National Defence in agreement with the Heads of the Department of Public Administration and the Department of National Economy and Finance of 6 October 1944 on partial mobilisation of horses and harnessed carts for the needs of the Polish Army (Journal of Laws No. 7, item 44), horses and carts of the owners who intentionally evaded collection were subject to requisition without any compensation.

³⁴ The Regulation of the Council of Ministers of 17 July 1981 on duties for the defence of the country, Journal of Laws No. 20, item 103. This act was repealed as a result of announcing the Regulation of the Council of Ministers of 6 September 1993 on duties for defence, Journal of Laws No. 85, item 397.

³⁵ The Decree on martial law of 12 December 1981, Journal of Laws No. 29, item 154.

and in-kind contributions. However, according to the order of the Minister of Internal Affairs,³⁶ the imposition and performance of personal services and in-kind contributions for the defence of the country during martial law took place according to the rules set out in separate regulations.³⁷

As far as personal services were concerned, the Decree of 1981 provided that the Council of Ministers could introduce a universal obligation to perform work for persons, over 15 years of age and not reaching retirement age, capable of performing work due to their state of health and personal and family conditions. As regards employees, the obligation concerned the type and conditions of work defined by their employment relationship and the provisions of labour law, and in the case of persons who were not employed in a company or were employed in a private company running an activity which did not satisfy the basic needs of the population – it consisted in reporting at the time and place made public by the head officer competent for the place of permanent residence, in order to obtain a referral to a state-run workplace and to undertake and perform work of a specific type for the workplace identified in the issued referral, under the conditions set out in that referral and in the labour legislation.³⁸

In addition, the head officer competent for the company's registered office could transfer employees to other companies in his area of operation, and the head of the company could assign additional activities to the employee and entrust him or her with other work in the same or different town, even without his or her consent. The employee was obliged to work 6 days a week, but the daily working hours could not exceed 8 hours per day, although in case of special needs of the company, the daily working hours could be extended to 12 hours per day.

In kind-contributions provided for in the martial law Decree of 1981 specified that the Council of Ministers could impose, on natural and legal persons owning an agricultural farm, special duties for the benefit of the food sector, consisting in the supply to the State of certain agricultural products, the cultivation of certain plant species, and the use of agricultural land and agricultural means and facilities

³⁶ The Order of the Minister of Internal Affairs on the duties for the benefit of the defence of the country during martial law, "Monitor Polski" No. 30, item 276.

³⁷ The Act of 21 November 1967 on the Universal Obligation to Defend the Polish People's Republic, Journal of Laws No. 44, item 220; the Regulation of the Council of Ministers of 17 July 1981 on the duties for the benefit of the defence of the country, Journal of Laws No. 20, item 103.

³⁸ Under the Regulation of the Council of Ministers, men who were not subject to the universal obligation to perform work, included, *inter alia*: pensioners; those classified in one of the groups of disabled persons; craftsmen; those providing exclusive care for a child under 15 years of age or other family members requiring care due to their age or state of health; owners of individual farms; those attending schools, clergy and monks; foreign citizens, see: the Regulation of the Council of Ministers of 30 December 1981 on the introduction of a general obligation to perform work during martial law, Journal of Laws No. 32, item 187.

for agricultural production, and could introduce restrictions on the marketing and processing of certain agricultural products.

In addition, the legislation provided that the Council of Ministers could introduce the lease of premises and buildings on the basis of an administrative allocation decision for all premises and buildings.³⁹ Real estate necessary for the defence of the State or for the performance of important socio-economic tasks could be expropriated.

Let us finally move on to the analysis of public burdens on the basis of the current legislation in Poland. Apart from the above-mentioned reasons for the duty to bear the burdens connected with the defence of the Homeland listed above, the chapter on extraordinary measures of the Constitution of 1997 does not mention anything else. Let us try to trace what solutions in this respect are provided for by the Act defining the procedure for introducing martial law and the operating principles of public authorities.⁴⁰

The mentioned Act contains quite laconic references to the subject of our interest, formulating only superficially the scope of competence of individual public authorities. Pursuant to Article 11(2), during martial law the Council of Ministers orders the transition to wartime operating principles of public authority, defined in separate regulations, while the Minister of National Defence presents to the competent authorities the needs for the services of state bodies and local government units, entrepreneurs and other organisational units and natural persons, for the benefit of the Armed Forces and State defence (Article 12(3)).

The chapter defining the scope of restrictions on freedoms and rights of persons and citizens indicates that during martial law it is possible to impose additional tasks on entrepreneurs, the implementation of which is necessary for the security or defence of the state and to ensure the supply of products to the public – including the introduction of receivers for entrepreneurs if their scope of activity is the manufacture of products or the provision of services of particular importance to security (Article 25a(1)(1) and (2)), which is intended to ensure the effectiveness of the manufacture of products or the provision of services (Article 25a(1)(1) and (2)); to impose on natural persons and legal persons running agricultural farms an obligation to provide services consisting in the supply of agri-food products to certain entities and the cultivation of certain plant species and animal husbandry (Article 25(1)(3)); to introduce the lease of premises and buildings on the basis of

³⁹ Cf. remarks on the changes and modification of civil law in the light of the martial law legislation made by A. Machnikowska, *Wpływ ustawodawstwa stanu wojennego na prawo cywilne w Polsce*, „Studia nad Autorytaryzmem i Totalitaryzmem” 2017, vol. 3(39), pp. 37–44.

⁴⁰ The Act of 29 August 2002 on martial law and the powers of the Commander-in-Chief of the Armed Forces and the principles of his subordination to the constitutional bodies of the Republic of Poland, Journal of Laws No. 156, item 1301.

an administrative allocation decision for all premises and buildings, and also, in justified cases, the accommodation of additional persons to a dwelling or building (Article 25(1)(4)); to introduce the seizure of real estate necessary for the Armed Forces or the defence of the State (Article 25(1)(5)).

As far as the provisions on personal services are concerned, the applicable regulations state that during martial law an obligation may be introduced for carriers to perform transport for the purposes of national defence and security. In the light of the provisions of the Constitution of the Republic of Poland of 1997, during martial law, a general obligation to perform work may also be introduced for persons who are over 16 and under 65 years of age and are capable of performing work due to their state of health and personal and family conditions. The aforementioned public burdens are determined by the President of the Republic of Poland in a regulation and introduced by means of regulations of the Council of Ministers and decisions of the competent government administration bodies.

Requisitions

When analysing one of the three types of extraordinary measures – martial law – it is impossible not to mention the traditionally most controversial regulation on public burdens, namely the possibility of requisitioning.

Let us recall that the institution of war requisitions, understood as a way of acquiring for the needs of armies items that are important for them, has probably existed ever since people started to fight with one other and with the progress of civilization, as well as with the art of war, has evolved to the present times.⁴¹

Due to the prevalence of wars waged by people over the centuries, issues related to requisitions first became the domain of international law. In the light of the norms of this branch of jurisprudence in the field of war requisitions related to the occupation of a territory, various services and deliveries required by the occupier often take place, e.g. the provision of quarters for soldiers, supply of *podvodas*, performance of work on the construction and repair of roads, railways, runways

⁴¹ During the period of the Duchy of Warsaw, or earlier during the wars of revolutionary France and then Napoleonic wars, the needs of the army were often satisfied by means of requisitions, see: The Central Archives of Historical Records in Warsaw, “Rada Stanu i Rada Ministrów Księstwa Warszawskiego” [The Council of State and the Council of Ministers of the Duchy of Warsaw] fonds No. 175, file No. 202, cards 1–69 (hereinafter: CAHR); CAHR, “Rada Ministrów Księstwa Warszawskiego” [The Council of Ministers of the Duchy of Warsaw], fonds No. 176, file No. 117, cards 2–143. Cf. J. Przygodzki, *Rekwizycje w Księstwie Warszawskim w okresie rosyjskich rządów okupacyjnych*, „Acta Universitatis Wratislaviensis. Prawo” 2001, vol. 273, pp. 125–140; M. Konarski, *Rekwizycje na ziemiach polskich w latach 1919–1920 w świetle ustawodawstwa i orzecznictwa sądowego*, „Studia Prawnicze KUL” 2021, nr 2, pp. 81–101.

for aircraft, etc. In the light of the Regulations Concerning the Laws and Customs of War on Land annexed to the Fourth Convention adopted in The Hague on 18 October 1907, which, in addition to the Second Hague Convention of 1899 and the Fourth Geneva Convention of 1949, is the source of the modern legal regime of war occupation, the seizure of property belonging to private persons, including property used for the transport of persons or goods, does not entail a change of ownership, since such property should be returned after the conclusion of the peace treaty. After the end of the Second World War, courts often refused to recognise the legitimacy of requisitioning if payment for the requisitioned items had not been made or guaranteed, or a receipt had not been issued.

In reborn Poland after World War I, the first regulations in the field of requisitioning appeared as early as in 1919.⁴² According to these regulations, the demand for wartime contributions was made by means of requisition orders issued by the relevant administrative offices on the basis of demand documents,⁴³ issued by the military authorities, but the demand for contributions could also be made by means of requisition orders from the military authorities through a *gmina* office.⁴⁴

During the Polish-Soviet War, the provisions on requisitioning changed and were adapted to the war conditions at that time.⁴⁵ In the event of an urgent need, the military authorities, each time authorised by the Minister of Military Affairs, had the right to issue requisition orders directly to all natural and legal persons possessing any items needed for the purposes of supplying the army and defending the State.⁴⁶ The Minister of Military Affairs was, however, obliged to

⁴² The Decree of 8 February 1919 on the requisitioning of premises for government offices, Journal of Laws No. 14, item 197; the Act of 11 April 1919 on Wartime Contributions in Kind, Journal of Laws No. 32, item 264.

⁴³ See: the Regulation of the Lublin Voivode of 25 June 1920 on the requisitioning of bladed weapons on the territory of Lublin Voivodeship, Official Journal of Lublin Voivodeship of 15 July 1920, No. 3, item 49 (hereinafter: OJLV); the Regulation of the Lublin Voivode of 27 July 1920 on the requisitioning of saddles on the territory of Lublin Voivodeship, OJLV of 31 July 1920, No. 4, item 59.

⁴⁴ The Implementing Regulation of the Minister of Military Affairs and the Minister of Internal Affairs to Articles 10(3), 11 and 12 of the Act of 11 April 1919 on Wartime Contributions in Kind, concerning the establishment of the Central and Regional Requisition Committees, Journal of Laws No. 97, item 514; The Implementing Regulation of the Minister of Military Affairs and the Minister of Internal Affairs to the Act of 11 April 1919 on Wartime Contributions in Kind, Journal of Laws No. 32, item 264; "Monitor Polski" No. 100–101.

⁴⁵ The Regulation of the State Defence Council of 15 July 1920 on issuing direct requisition orders by military authorities (a supplement to the Act of 28 October 1919), Journal of Laws 1920 No. 62, item 407; the Regulation of the Minister of Military Affairs and the Minister of Internal Affairs on the powers of military authorities to enforce wartime personal services and in-kind contributions, and also on public security, peace and order, Journal of Laws 1920, No. 67, item 457.

⁴⁶ Order No. 314 of 10 April 1920 on the powers to requisition and manage premises for military purposes, Journal of Military Orders of the Ministry of Military Affairs [hereinafter: JMOMMA] No. 13 of 27 April 1920; Order No. 742 of 6 September 1920 on the prohibition of the requisitioning

consult with the minister concerned beforehand and listen to his opinion as to the appropriateness of ordering requisition and its appropriateness for a given category of persons, and in the event of disagreement, the Council of Ministers made the final decision.

In practice, this meant that in the areas considered by the Ministry of Military Affairs as endangered in terms of war, when the executive power was transferred to these areas, the military commander – appointed as military governor – had the right to directly issue requisition orders for in-kind wartime contributions; the right to order the population to personal wartime services; the right to issue orders in matters relating to security, peace and public order to local administrative authorities. It should be remembered that the abuses committed during the requisition were very frequent and were a constant element of everyday life.⁴⁷

After the end of the Second World War, legal regulations relating to the procedure and subject of requisitioning were established in the Decree on Martial Law of 1981, which provide that the means of road, rail, air and water transport of the country for which the decision on the state of war was made, located on the territory of the People's Republic of Poland, were subject to seizure or requisition, which was to take place by way of a Regulation of the Minister of Foreign Affairs

of livestock and horses in towns affected by enemy invasion and from refugees, JMOMMA No. 34 of 21 September 1920; Order No. 765 of 12 September 1920 on the relationship between the military authorities subordinate to the Minister of Military Affairs and the authorities subordinate to the Commander-in-Chief of the Polish Army, concerning wartime duties, JMOMMA No. 35 of 28 September 1920; Order No. 1021 on the requisitioning of cars and motorcycles, bicycles and spare parts for them, JMOMMA No. 49 of 28 December 1920. For more about the requisitioning of food, means of transport (horses), means of communication, etc., see: The State Archives in Poznań, "Ministerstwo byłej Dzielnicy Pruskiej w Poznaniu" [The Ministry of the former Prussian District], fonds No. 295, file No. 198, cards 1–262; The State Archives in Piotrków Trybunalski, "Komisariat Rządu Ludowego w Piotrkowie 1918–1919 (1920)" [The Commissariat of the People's Government in Piotrków 1918–1919 (1920)], fonds No. 909, file No. 15, cards 1–38; The State Archives in Radom "Zbiór afiszów, plakatów i druków ulotnych do 1939 roku" [The collection of placards, posters and jobbing prints until 1939], fonds No. 206, file No. 1668, card 1 (hereinafter: SAR).

⁴⁷ See: M. Konarski, *A military order as a source of information about requisitions on Polish soil in 1919–1920*, „Teka Komisji Prawniczej PAN Oddział w Lublinie” 2021, vol. 14, pp. 183–202. Malpractice of the Polish army was so frequent that the Minister of Military Affairs had to intervene by way of personal orders, see: Order No. 698 of 18 February 1920 on the prohibition of arbitrary requisitioning of horses and other items, JMOMMA No. 21 of 25 February 1920; Order No. 728 of 28 August 1920 on requisitioning and liability for lawlessness, JMOMMA No. 33 of 14 September 1920; Order No. 797 of 2 October 1920 on combating widespread abuse by soldiers, JMOMMA No. 37 of 12 October 1920; The announcement of the Lublin Voivode of 24 August 1920, in agreement with the 3rd Army Command and the General District Command of Lublin on combating abuse during purchases and requisitions from civilians for the army, OJLV of 12 November 1920 No. 5, item 100. Cf. SAR, fonds No. 206, file No. 271, card 1.

in agreement with the Minister of Transport and the Minister – Head of the Maritime Economy Office.

In the light of the regulations currently in force – in accordance with Article 27(1) of the Act of 29 August 2002 – means of road, rail and air transport as well as sea and inland waterway vessels may be seized or requisitioned for the state's defence needs during martial law, which is to take place according to the procedure determined by the ministers in charge of transport, inland waterways and maritime economy, in agreement with the Minister of National Defence and the Minister of Internal Affairs.

The provisions of the Act on requisitioning were developed in 2003 by implementing regulations which define the procedure of seizure or requisitioning and return of the above-mentioned types of means of transport.⁴⁸ The following bodies are entitled to seize and return the seized means of transport: the chief of the Armed Forces Support Inspectorate; heads of voivodeship military staffs; military commanders of draft boards; the Head of the Military Counter-intelligence Service or the Head of the Military Intelligence Service; the Chief Commander of the Police; the Chief Commander of the Border Guard; the Head of the Internal Security Agency; the voivode competent for the province where a given means of transport is registered.

The bodies performing the competences in the field of requisitioning and return of requisitioned means of transport include: commanders of military units; the Commander-in-Chief of the Military Police; the Head of the Military Counter-Intelligence Service or the Head of the Military Intelligence Service; the Head of the Armed Forces Support Inspectorate.

The persons authorised temporarily to seize means of transport are representatives of one of the above-mentioned authorities ("seizor") or a representative, authorised to requisition means of transport for an indefinite period of time, of an authority authorised to perform requisitions ("requisitioner"), who issues the confirmation in writing of the seizure or requisitions of a means of transport to its possessor.

Such a confirmation includes: the designation of the authority competent for the seizure or requisitioning; name, position and official ID card number of the seizor or requisitioner; details of the owner of the means of transport; the time and place of the seizure or requisitioning; the type of the means of transport; the

⁴⁸ The Regulation of the Minister of Infrastructure of 30 August 2004 on seizing or requisitioning means of transport for the State defence needs during martial law, Journal of Laws No. 200, item 2055; the Regulation of the Minister of Infrastructure of 19 September 2011 amending the Regulation on seizing or requisitioning means of transport for the State defence needs during martial law, Journal of Laws No. 223, item 1332. It should be remembered that means of transport constituting mobilisation reserves are exempt from the tax on means of transport, see: Article 12(2) of the Act of 12 January 1991 on local taxes and charges, Journal of Laws No. 9, item 31.

quantity of propellants and consumables; the technical condition and degree of wear and tear of the means of transport; the identification details of the means of transport; the signature of the seizer or requisitioner.

The confirmation of the seizure should specify the date and place of return of the means of transport, and a copy of the confirmation is delivered to the owner of the means of transport, within 7 days from the day it is drawn up. The owner hands over a means of transport to the seizer or requisitioner together with its road worthiness documents.

The means of transport is returned to the owner once the cause of the requisition has ceased to exist, at a date and place indicated by the authority which holds the means of transport. The seized or requisitioned means of transport is returned with the quantities of propellants and consumables corresponding to their quantity stated in the confirmation and road worthiness documents. These documents are returned upon presentation of the confirmation and drawing up by the returning party of a return form, which specifies the technical condition and the degree of wear and tear of the means of transport.

If it is not possible to return the seized means of transport at the time or place specified in the confirmation, the authority which holds the means of transport notifies the owner no later than 7 days before the scheduled date of return. The seized means of transport is returned to the owner when the reason for non-return ceases to exist, at the time and place indicated by the authority which holds the means of transport.

In the event of loss or destruction of the means of transport, when its return on time is not possible, the authority which held the means of transport notifies the owner of this fact and draws up a protocol of the loss or destruction of the means of transport. A copy of this protocol is delivered to the owner of the means of transport within 7 days from the date it is drawn up. The protocols concerning the return of the means of transport or the impossibility of its return include an instruction about the claim for compensation in the case of a property loss as a result of the seizure or requisition of the means of transport under the procedure provided for by the relevant regulations.⁴⁹

In the light of the provisions governing the compensation of property losses in the cases which are of interest to us, anyone who has suffered a property loss as a result of a restriction of freedoms and rights of persons and citizens during martial law (a period when an extraordinary measure is in force) is entitled to a claim for compensation, covering the compensation of the property loss,

⁴⁹ The Act of 22 November 2002 on compensating for loss of property resulting from limitation of the freedoms and rights of persons and citizens during a period requiring introduction of extraordinary measures, *Journal of Laws* No. 233, item 1955.

without the benefits which the victim could have obtained if the loss had not occurred. The procedure for claiming damages is therefore of an administrative and judicial nature, that is to say, as will be seen below, it assumes that the judicial procedure is open to persons claiming damages only if the administrative authority does not issue a decision on compensation within 3 months of the date on which proceedings were initiated.⁵⁰

Compensation is due from the State Treasury under the rules set out in the Civil Code,⁵¹ with, however, the exception of Articles 415–420,² and is not due if the property loss was caused exclusively by the injured party or a third party. Compensation is granted upon written request of the injured party, which is submitted to the competent voivode and should include: the designation of the authority to which it is addressed and the case to which it relates; the name and address of the applicant; the amount of the property loss suffered and the time, place and circumstances of its occurrence; the type of restriction from which the property loss resulted; the date and signature of the person submitting the letter. The decision on compensation shall be issued by the voivode competent for the place where the property loss occurred, and if the property loss occurred on the territory of two or more voivodeships, the voivode to whom the application was first submitted is competent to issue the decision. If it is not possible to establish which voivode is competent, the decision on compensation is issued by the Voivode of Mazovia.

A voivode issues a decision on compensation immediately, but no later than within 3 months from the date of submission of the application, and the decision is final. If compensation is granted, it is paid within 30 days from the date of receipt of the decision by the aggrieved person. The aggrieved person who is dissatisfied with the decision on compensation may, within 30 days from the date of receipt of the decision, bring an action before a common court of law, but bringing this action does not suspend the execution of the decision.

A claim for compensation is time-barred after one year from the date on which the aggrieved party learned of the loss of property, but in any case the claim is time-barred after three years from the date of lifting martial law (an extraordinary measure).⁵²

⁵⁰ Cf. J. Boć, *Wyrównywanie strat wynikłych z legalnych działań administracji*, Wrocław 1974, pp. 134–168.

⁵¹ The Act of 23 April 1964 – Civil Code, Journal of Laws No. 16, item 93, as amended.

⁵² Cf. the provisions of French law on this matter, M. Konarski, *Rekwizycje wojskowe w prawie francuskim*, „Opolskie Studia Administracyjno-Prawne” 2022, vol. 20(1), pp. 87–91.

Conclusions

The issues of martial law in the literature on the subject are usually subject to scientific analysis from the point of view of the restriction of civil rights and freedoms during the period of martial law or from the point of view of criminal legislation, drawing attention to, for example, extending its criminalisation. The issues subject to this analysis are treated in a limited way, and the research conducted above is among the first in this respect.

Therefore, my main recommendation for further research is increased research in the area of legislation on the duty to provide personal services and in-kind contributions, not only during martial law, but also in the case of the introduction of the other two constitutional extraordinary measures – a state of emergency and a state of natural disaster. Moreover, one should remember about the mutual relations between martial law and a state of war and the legal consequences for citizens in the event of mobilisation. Another research recommendation therefore is to intensify research on the unification of legislation on public burdens for the benefit of state defence. It seems that the current legal solutions in this respect are not satisfactory, mainly due to the lack of terminological precision, as well as to the heterogeneous nature of substantive and procedural law provisions relating to personal services and in-kind contributions in the event the above-mentioned circumstances occur.

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Abstract: The article analyses legal regulations relating to the constitutional duty to bear public burdens. The author examines the development and formation in the Polish legal system of legal norms relating to one of these burdens, namely personal services and in-kind contributions. The discussion concerns only the duty to bear these burdens in the event of occurrence of premises for introducing one of the three, apart from a state of emergency and a state of natural disaster, extraordinary measures mentioned in the Constitution of the Republic of Poland – martial law.

Keywords: constitution; administrative law; martial law; public burdens; requisitions

Abstrakt: Przedmiot analizy stanowią regulacje prawne odnoszące się do konstytucyjnego obowiązku ponoszenia ciężarów publicznych. Autor poddaje badaniu rozwój i kształtowanie się w polskim porządku prawnym norm prawnych odnoszących się do jednego z rodzajów tych ciężarów, a mianowicie świadczeń osobistych i rzeczowych. Rozważania w tym przedmiocie dotyczą wyłącznie obowiązku ponoszenia tych ciężarów w przypadku zaistnienia przesłanek do wprowadzenia jednego z trzech wymienionych w Konstytucji RP, obok stanu wyjątkowego i stanu klęski żywiołowej, stanów nadzwyczajnych – stanu wojennego.

Słowa kluczowe: konstytucja; prawo administracyjne; stan wojenny; ciężary publiczne; rekwizycje