

SOME REMARKS ON THE STATUS OF THE POPULATION IN CRISIS SITUATIONS IN THE CZECH REPUBLIC – THE LEGAL ASPECT

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Abstract

This paper is focused on the status of the population and the specifics of public administration in crisis situations in the Czech Republic. The crisis situation requires a quick and efficient solution, therefore the legislature allows public authorities to make decisions in the simplified process, impose special duties to natural and legal persons, or even restrict them from executing their fundamental rights and freedoms. The article analyzes some particular legislation in this area, highlights the differences from the usual functioning of public administration bodies as well as public participation in governance during crisis states in the Czech Republic.

Keywords

Crisis situation, crisis state, fundamental rights and freedoms, population, public administration.

INTRODUCTION

The role of the law in preparation for crisis situations and during their solution is specific. The cause of a crisis situation subsists in the objective reality independently on the law (natural disasters, ecological catastrophes, industrial accidents of a large extent, the collapse of supplying with necessary products or the loss of their sources, the collapse of the economy function, acts of terrorism or extremism,¹ mass disturbance of state borders by migrating foreigners, but also military threats which are directly connected with the national defence). The lawmaker there is in the position of the one who defines these objective realities in a certain way, declares the existence of objective realities which already occurred or are just threatening, responds to them using current and and exceptional means of legal, economical, technical, financial or other character and as a whole generates a system of measures set out for solving a particular crisis situation.

The representants of public authority² are given the competences for setting various duties to the population. Physical persons are mostly in the position of the addressees of duties which are set during crisis situations (non-military or military). These duties are various, e.g. the duty to provide personal or material aid,

in some case duties connected with conscription. The assurance of security is by course of constitutional Act No. 110/1998 Coll., on the Czech Republic security, as amended, a common affair of all subjects, not only of the executors of public power but also of the population which consequently allows to merge the forces and means and in case of a threat to avert this threat or at least to minimize irreversible damage in case of a crisis situation. The execution of public administration both on central or regional level, legal tools regarding by law foreseeable actions in the execution of basic rights and freedoms of the population, as well as the concretization of individual rights and obligations of legal persons and physical persons in preparation and solution of crisis situations are in the Czech Republic ensured by special laws which figure first of all as the source of the administration law.

1 NON-MILITARY AND MILITARY CRISIS SITUATIONS IN THE CZECH REPUBLIC

In case of crisis situations which are not connected with ensuring the Czech Republic defence against the outside attack, it is possible to declare one of non-military (civil) crisis states (state of danger, state of emergency, state of national jeopardy). If there are crisis situations that are related to the assurance of the Czech Republic defence against the outside enemy, it is possible to declare some of the military crisis situations (state of national jeopardy, war state).³ The category (level) of a crisis state is dependent on the period of duration and the intensity of impacts of a crisis situation, on the size of an effected area, and the number of people effected by its impacts. It is necessary to remark that crisis states are declared for solving crisis situations, for extraordinary situations solving current procedures in public administration are applied, therefore without the declaration of a crisis state. The declaration of a crisis state figures as a necessary condition for the adoption by law foreseeable crisis measures which necessarily bring limits for the population.

The legal adjustment of conditions for the declaration of crisis states is encompassed in more regulations of various legal power. In the Czech legal order does not exist any special law which would solve this issue in its complexity. When defining constitutional bases of crisis states it is necessary to refer first of all to the Constitution of the Czech Republic and the Constitutional Act No. 110/1998 Coll., on the Security of the Czech Republic, as amended. In case of solving non-military crisis situations there is one of key sources of legal modification the Act n. 240/2000 Coll., on crisis management and on changes of several acts (crisis act), as amended. This act sets the sphere of actions (therefore the range of affairs by which the bodies of public administration are entrusted) and competences (i.e. the set of legal means for the performance of tasks within the sphere of actions) of state authorities and authorities of regional self-administration, rights and obligations of legal and physical persons in the preparation for non-military crisis situations and during their solving and newly in protection of critical infrastructure⁴ and further

also the responsibility in case of the infringement of these obligations. For placing duties and restrictions of basic rights and freedoms of the population during military crisis situations an important source of legal modification is the Act No. 222/1999 Coll., on the assurance of the Czech Republic defence, as amended, and also the Act No. 585/2004 Coll., on the constriction and its assurance (military law).

2 POPULATION AS THE ADDRESSEE OF DUTIES AND RESTRICTIONS DURING CRISIS SITUATIONS

During non-military and military crisis states it is possible to exert against the addressees of duties specific procedures foreseeable by a legal order determined for solving crisis situations. A citizen in the system of crisis management in a democratic legal state is regarded on two levels – they are both “an object” of protection and at the same time the duty to take part in mitigations of the consequences of crisis situations is placed on them. This way the crisis authorities can place duties on them and restrict from basic rights and freedoms⁵, because the necessary effectivity of crisis measures are usually achieved at the expense of the temporary infringement into the fundamental rights and freedoms. The Declaration of fundamental rights and freedoms (thereinafter “Declaration”) sets the conditions under which the state power is allowed to restrict from the fundamental rights and freedoms. The basic rule for the restriction of basic rights and freedoms is so called stipulation of the law.⁶

Special laws enable such intervention to a necessary extent and under stipulated conditions. This construction stems from the supposition that the interest in the protection of life and health of population and its property is preferred to the interest in not admitting even temporary restriction of some fundamental rights and freedoms guaranteed by the Declaration. During non-military crisis situations (specifically in case of the state of emergency or the state of national jeopardy) the marshal can order by a work order a physical person a duty and it is not forced work or service which would resist the art. 9 of the Declaration, the work duty and work support is considered as the other act in general interest according to § 203 of the work code. Other duties which can be placed according to a crisis law is the duty to provide material means. This duty can be ordered to both physical persons and especially legal ones. According to a newly introduced regulation § 39c of a crisis law the authorities of crisis management during the solving a crisis situation are to proceed so that a respective infringement into the rights and freedoms did not exceed a necessary range. This means a lawful anchoring of the principle of adequacy.

For the decision making and placing work duties and obligations to provide material means it is not possible to apply the Act No. 500/2004 Coll, administrative order, as amended. Crisis act stipulates that the decision making and the procedure of so called crisis authorities when placing duties on the population during non-military crisis states is the procedure sui generis for which it is not

possible to apply the enactments of the administrative order. This construction is applied especially in order to avoid the unnecessary time outs which occur during the procedure in the administrative action. Fulfillment of some tasks at the shortest possible time may be in crisis situations an indispensable presumption for the rescue of people or protection of the property. By reason of this it is not possible when solving crisis situations when time units are often just hours, if not minutes, where it is necessary to start rescue work, to proceed according to the administrative order. The administrative order enables to use legal remedies against the decisions of the authority which would cause inadmissible time delay which would lead to the ineffectivity of set crisis measures ordered in the interest of the protection of persons and property. Further the delays rise due to the administrative order which fixes time for decision making, retraction, delivery etc. Because it is just the time that plays during the solution of crisis situations the most important role, the legislator chose this legal solution.

A similar procedure was chosen by the legislator also in some processes according to the Act No. 222/1999 Coll., on the assurance of the Czech Republic defence, as amended. This act enables to set similar duties to the population as it is in case of a crisis act but during military crisis states. The decision making and the procedure of administrative bodies under the state of national jeopardy and in case of a war state is also a procedure sui generis for which it is not possible to use the provision of an administrative order. The population can be according to this act restricted from free movement and stay, from the right of assembly and also from other human rights as long as the treaties on human rights and fundamental freedoms by which the Czech Republic is bound, allow this⁷. In the military law there is the possibility to restrict from the freedom of movement and stay to selected citizens of our country - the citizens of the CR who have the restriction or are professional soldiers - these must get during the state of national jeopardy or a war state an approval for traveling abroad.

3 THE PARTICIPATION OF THE POPULATION IN THE ADMINISTRATION OF PUBLIC AFFAIRS IN CRISIS SITUATIONS

Among basic constitutional principles in the CR belongs the right of the citizens to participate in the administration of public affairs. In accordance with the provision of the art. 21 of the Declaration the citizens have the right to participate in the administration of public affairs directly or by free election of their representatives. During crisis situations, however, the persons will be restricted from the execution of other fundamental rights and freedoms which are connected with the participation of persons in the administration of public affairs or expressing approaches and standpoints during the execution of public power.

The elections represent in a democratic legal state the mechanism on the base of which the citizens delegate their representatives into the policy whereas the winner of the elections gains the right to decide basic affairs regarding all citizens.

However, during crisis states the situations might occur in which the elections cannot be held. The constitutional act on the security therefore enables in art. 10 the prolongation of an election period. This practice can be applied both in case of military crisis situations, and during non-military crisis situations. The indispensable condition is to declare in the CR one of the higher crisis states (it cannot be applied e.g. in case of the state of danger as the lowest non-military crisis state). As long as during the state of emergency, state of national jeopardy or a war state the conditions on the CR territory do not allow to hold elections which are set for regular election periods, these periods can be prolonged. This will be done by the law and the period will be extended at most by six months. To this it is necessary to make a remark that the constitutional act on the security explicitly do not eliminate the possibility of repeated prolongation, further it does not limit which elections may use this procedure (apparently both elections into local and regional representative bodies, into the lower and upper chamber of the CR Parliament, into the European Parliament or the president of the republic).

To legal forms of civilian participation also belongs the direct participation of the public in the decision making and expressing standpoints and positions especially by the application of the petition right, assembly right and the participation in a local and regional referendum. The petition right, one of the guarantees of legality in public administration is guaranteed to everybody the art. 18 of the Declaration. On the base of its the citizens may address the state bodies and bodies of territorial self-administration and convey them their requirements, suggestions or complaints. With a petition it is possible to come to the bodies of the state or the bodies of territorial self-administration according to the Act No. 85/1990 Coll., on the petition right either as an individual citizen or citizens may set together a petition committee. For the provision of this right it is not explicitly set the limitation during crisis states.

The assembly right, the right to create together with others associations, societies and institutions is guaranteed by the constitution the art. 20 of the Declaration. It is a constitutional guarantee to create associations – whether in an institutionalized form i.e. as a legal person with its own subjectivity or on the contrary as an informal association not adjusted by a legal order and therefore as a new separate subject of law not rising.⁸ Specific cases of applying the right of association is associating in political parties and political movements, associating in churches and associating in trade unions. The Act No. 83/1990 Coll., on the assembling of citizens, as amended, which adjusts closer the assembly of citizens, no explicit limitations during crisis situations are set.

It is different in case of the participation in public affairs and in demonstrations of opinions on gatherings. The application of the assembling right is anchored in the art. 19 of the Declaration. This provision anticipates the possibility of the restriction from the execution of this right by law in case of the assembling in public places if it concerns the measures in a democratic society necessary for the protection of rights and freedoms of others, protection of public order, health, morality, property or for the national security. Specifically then the crisis act in the provision § 5 letter d) enables to limit the right of assembling in a

specified space of the threatened territory or territory effected by a crisis situation. This provision this way, during higher non-military crisis states, therefore during a state of emergency and a state of national jeopardy, enables the infringement into the execution of this right. Similarly the Act No. 222/1999 Coll., on the assurance of the Czech Republic defence, as amended, in the provision § 53 para. 1 adjusts the competence to the necessary extent to limit the freedom of movement and stay and the assembling right as the means for the assurance of the national defence in case of the state of national jeopardy or a war state. Paragraph 3 of the above mentioned provision further sets that the limitation of the assembling right lies in the obligation to follow the prohibition to call up gatherings on a public place including street marches and manifestations.

A typical legal form of civilian participation is undoubtedly local and regional referendum. The referendum is at present legally adjusted by the Act No. 22/2004 Coll., on a local referendum and on changes of some acts, as amended, and by the Act No. 118/2010 Coll., on a regional referendum and on changes of some acts. According to these acts the entitled citizens decide in a referendum in the form of the approval or disapproval on specifically laid questions which belong to a separate sphere of actions of a municipality or a statutory town, let us say region. Provision of § 5 par. 2 of these acts accordingly adjust, that on the territory where the local referendum is to take place, let us say in a region where the regional referendum is to take place, during the state of danger, emergency state, state of national jeopardy or a war state the course of terms is according to this act interrupted and a local (regional) referendum does not take place. The day of holding a local referendum is set by a representative body of a municipality, a representative body of a town, a representative body of a town district or a representative body of a statutory town and a representative body of the capital city Prague so that it took place as late as 90 days after the end of a crisis state. Similarly the day of holding a regional referendum is set by a representative body of a region so that it took as late as 90 days after the end of a crisis state.

CONCLUSION

The execution of public administration in the area of security administration, specifically in the area of crisis management belongs among traditional areas of the administrative law. The application of public administration during crisis states has its specifics. We may encounter simplified and speeded up procedures of administration bodies in administrative processes, exclusion of the application of an administrative order or setting special duties, setting crisis measures usually at the expense of the temporary infringement into fundamental rights and freedoms of the population. During crisis situations, as long as a crisis state is declared, we may also in accordance with the Czech law limit the participation of persons in the administration of public affairs. The Czech legal order enables in cases when the crisis situation requires quick and effective solution to use also non-standard ones, nevertheless by law foreseeable procedures

by which the execution of basic rights and freedoms is limited. We may then meet the possibility of prolongation of an election period and the shift of holding elections after the end of a crisis, limitation of the assembling right or the interruption of holding the local or regional referendum or its postponing.

Résumé

The execution of public administration in the area of security management has its own specifics in the Czech Republic – simplified and accelerated procedures imposing specific duties to natural and legal persons (e.g. work duty, temporary help), emergency measures that temporarily interfere with fundamental rights and freedoms of the population or limit participation of citizens in the administration of public affairs (e.g. postponing elections, local referendum or regional referendum). During crisis states when crisis situations require a quick and effective solution, the Czech law allows to use procedures which limit the execution of fundamental rights and freedoms (e.g. the assembling right) or exclude the application of the Code of Administrative Procedure.

NOTES:

¹ S In more details e.g. SVOBODA, Ivo, et al. *Political extremism and terrorism as a threat to homeland security*. Brno: Defence University, 2010, 144 pp. ISBN 80-7418-046-0.

² See the Resolution of the Constitutional Court of the Czech Republic of 1003-11-25, U 3/2 SbNU, sp. zn. II. US 75/93, according to it the representative of public power is the one who „...in an authoritative way determines the rights and duties to the subjects, whether directly or mediately. A subject about whose rights or duties the body of public power decides is not in an equal position with this body and the content of this body decision does not depend on the will of a subject...”.

³ In more details see e.g. Josef JANOSEK, David REHAK The Czech republic and crisis states during military threats. *The Science for Population Protection* [online], 2010, Vol. 2, No. 2.

⁴ Crisis Act has undergone several changes since 2011-01-01 brought by the entry into force of the Act No. 430/2010 Coll., by which the Act No. 240/2000 Coll., on crisis management and the change of some acts (crisis act), as amended (thereinafter "amendment") was changed. The key reason for elaboration of this amendment was the necessity to incorporate into the Czech legal order the Regulation of the European Union Council No. 2008/114/ES of 2008-12-08 on the determination and marking of European critical infrastructures and the assessment of the need to increase their safety.

⁵ The application of these crisis measures is anticipated also e.g. in the documentary of crisis planning, more about this issue see HORAK, Rudolf, et al. *The guide of Crisis Planning for Public Administration*. Prague: Linde Praha, PLC. 2011.

⁶ see the article 4 para. 2 in conjunction with art. 2 of the Declaration of Fundamental Rights and Freedoms

⁷ Compare the provision of § 53 of the Act No. 222/1999 Coll., on the assurance of the Czech Republic defence, as amended, which through this construction enables more

significant limitation of fundamental rights and freedoms of the population than the provision of § 5 of a Crisis Act.

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- [12] Constitutional Act No. 2/1993 Coll., on the promulgation of the DECLARATION OF FUNDAMENTAL RIGHTS AND FREEDOMS as a part of the constitutional order of the Czech Republic, as amended.

- [13] Act n. 222/1999 Coll., on the assurance of the Czech Republic defence, as amended.
- [14] Act No. 240/2000 Coll., on Crisis management and on the changes of certain Acts (Crisis Act), as amended.
- [15] Act No. 22/2004 Coll., on local referendum and on the changes of certain Acts, as amended.
- [16] Act No. 500/2004 Coll., administrative order, as amended.
- [17] Act No. 262/2006 Coll., work code, as amended.
- [18] Act No. 118/2010 Coll., on regional referendum and on the changes of certain Acts, as amended.
- [19] Act No. 430/2010 Coll., which changes the Act No. 240/2000 Coll., on crisis management and on changes of certain acts (crisis act).