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LEGAL REGIMES IN POLICE ACTIVITY AT LATVIAN SECURITY POLICY

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Abstract: State security in the contex of different legal regimes used for state governance has been considered in this article. Administrative juridical regimes have particular role in policing in context of human rights observance.

Different administrative juridical regimes are described in this article. Special attention has been converted to classification of these regimens in dependence of mechanism of coming in force of them. Author pointed that police have rights to take decision of implementations of restrictions in the cases of extraordinary situations. In these situations in democratic states must be observed the principle of proportionality.

Keywords: State government, police, security policy, public service, state security, police law.

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1. Introduction

Security serves as precondition of societal development hence various facets of public security are being widely discussed (e.g. Makštutis *et al.* 2012; Białoskórski 2012; Čepėnaitė, Kavaliūnaitė 2013; Kaukas 2013). Establishment of a law-based state, strengthening of legal procedure in Latvia and Europe Union requires considerable increase of efficiency of law enforcement agencies including the police. Increase of efficiency is connected with taking integrated measures. These activities should involve application of the latest scientific achievements. One of the specific features of police activity is characterized by necessity to perform duties in various situations without delay, lengthy evaluation of the situation, analysis and preparation. Resources are often limited and the number of the available staff is unpredictable and their training levels – different. Police activity always has to be within the framework of the law and may not violate human rights of individuals. Both Latvian and foreign police practice indicates that the public does not always recognize dangerousness of a situation and is not sufficiently informed about the imposed restrictions and as a result serious incidents have taken place when the effectiveness and legality of police activity has been doubted.

As one of the main purposes of the police in democratic society governed by the rule of law is maintenance of the public tranquility, law and order in society. The purpose of the police is to protect and respect the individual's fundamental rights and freedoms also (The European Code…2001). The State shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia (The Constitution 1992).

Considering the values of democratic society the police must handle their duties in a rational and non-violent way in case of any potential conflict.

The police are empowered by state to use force and/or special powers for these purposes in a number of cases. Police function of state contains contradictions: the police have to protect democratic society by using force and duress in some specific cases, thus disregard the basic values of this non-violent democracy. Thus the police face with a paradox: they have to protect the basic rights by restricting them. This paradox must be solved by using the police's coercion right in a very cautious way within the framework of the law.

Public order and public security can be viewed as objects of the state administration and they form separate legal institutes. Latvian legislation does not define notions "public order" and "public security" and as a result the state administration institutions including the police lack common conception of the content and scope of their activities. Common understanding of legal base of police activities is very important in context of education of police officers. The aim of given article is to analyze legal regulation of police activity in different legal regimes as well as to determine the competence of the responsible institutions and officials.

2. Notions and essence of the state security

The notion "security" means the state being free from danger or injury (Tildes 2013)[1]. State security is a very important object of legal protection. It is frequently used in literature and legal acts. "Security" as legal term usually denotes 1) a condition when nothing or nobody is endangered or 2) a guarantee against infliction of harm (Ministry of Defense…2013). The notion "security" is used in many legislative acts of the Republic of Latvia, e.g. the Constitution of the Republic of Latvia, the National Security Law (subsection 2 of section 3), the Police Law and others. In the state security context "security" could be defined as follows: "Security is protection of vital interests of individuals, the society and the state against internal and external threats. Vital interests are a set of needs meeting of which stably provide existence and development of individuals, the society and the state. The objects of security are individuals (their rights and freedoms), the society (its material and spiritual values) and the state (its constitutional system, sovereignty and territorial integrity)". According to this definition three objects of security can be singled out: firstly, individual rights and freedoms, secondly, material and spiritual value of the society, thirdly, the constitutional system of the state, sovereignty and territorial integrity. In the Soviet legal science there was a special legal institute – public security. This legal institute is retained in the legislation of the Republic of Latvia. Public security can be viewed as a system of social relations that is regulated by legal and technical provisions and which results from application of high-risk objects or as a result of natural disasters or other emergencies. Interpretation of this definition indicates that public security is comprised of some specially regulated relations and public threats do not include all likely threats. Public security differs from individual security; the former is a threat to security of inhabitants of a particular region, district or urban area. It may result from railway, sea, air, vehicle, pipeline transport, lack of proper management of construction, road service and other objects, improper handling of flammable equipment and objects and reckless handling of firearms, ammunition, strong poisons, radioactive isotopes, and other dangerous substances and items. Public security can be endangered by meteorological conditions (e.g., strong wind, blizzards, rainstorms, forest fires), hydrological and hydro-meteorological conditions (e.g., overflowing of rivers resulting from storms, rainstorms, spring tide, floods, avalanches etc.) and seismic conditions (e.g., earthquakes, eruptions).

Public security may also be endangered during poorly managed mass events or as a result of omission or delayed actions of the responsible institutions during spontaneous or provoked gatherings of large numbers of people (e.g., , demonstrations, open air meetings, rallies).

Public security is closely connected with enforcement of technical provisions that regulate handling of very dangerous objects and enforcement of public order, for example, during management of road traffic and fire protection. In these cases breaches of safety regulations may obstruct harmonious and rhythmic functioning of the society, inflict feeling of fear and as a result may disrupt public order.

On the other hand, in many cases strengthening of public order is an integral part of maintaining public security. For example, adherence to the rules of human behavior during mass events not only ensures public order, but also helps to prevent threats to human life, health and property.

[1] Translation of the Latvian term „drošība" in English is "security" or "safety". The author of this article didn`t more deeply analyse differences between notions "security" and "safety" because the purpose of this article is to analyse Latvian legislation.

Opinions of European scientists about security can awake interest also. For instance, Buzan (1991) came to a conclusion that since 1989 radical changes have taken place in the relationship between internal and external security. According to Buzan (1991) termination of opposition between the two military blocs considerably changed the content of threats and created preconditions for revision of the global security system. After the cold war period security consists of a number of elements and can be viewed from various aspects. Firstly, military threat that refers to external security. Secondly, political threats that are related to both internal and external security and include subversive or antidemocratic activities against state institutions, symbols and ideology. Thirdly, social threats created by cultural integration process of ethnic or other socially related groups. Fourthly, economic threats that include threats caused by competition and unemployment. Fifthly, ecological threats that refer to both internal and external security, for instance, cross-border environmental pollution (Buzan 1991).

The European security strategy was drawn up under the authority of the European Union's High Representative for the Common Foreign and Security Policy, Javier Solana, and adopted by the Brussels European Council of 12 and 13 December 2003. It identifies the global challenges and key threats to the security of the Union and clarifies its strategic objectives in dealing with them, such as building security in the EU's neighbourhood and promoting an international order based on effective multilateralism. It also assesses the policy implications that these objectives have for Europe. In the context of ever-increasing globalisation, the internal and external aspects of security are inextricably linked. Flows of trade and investment, the development of technology and the spread of democracy have brought prosperity and freedom to many people, while others have perceived globalisation as a cause of frustration and injustice. In much of the developing world, poverty and diseases such as AIDS give rise to security concerns, and in many cases economic failure is linked to political problems and violent conflict. Security is a precondition for development. Competition for natural resources is likely to create further turbulence. Energy dependence is a special concern for Europe.

According the EU security strategy the key threats facing Europe are:

1) Terrorism. It puts lives at risk and seeks to undermine the openness and tolerance of our societies. It arises out of complex causes, including the pressures of modernisation, cultural, social and political crises, and the alienation of young people living in foreign societies.

2) Proliferation of weapons of mass destruction (WMD). This is potentially the greatest threat to our security. International treaty regimes and export control arrangements have slowed the spread of WMD, but we are entering a new and dangerous period. Advances in the biological sciences may increase the potency of biological weapons. The most frightening scenario is one in which terrorist groups acquire weapons of mass destruction. In this event, a small group would be able to inflict damage on a scale previously possible only for States and armies.

3) Regional conflicts. These can have a direct or indirect impact on European interests, regardless of their geographical location. They pose a threat to minorities, fundamental freedoms and human rights. They can lead to extremism and terrorism and provoke state failure.

4) State failure. Civil conflict and bad governance - corruption, abuse of power, weak institutions and lack of accountability - corrode States from within. This can lead to a collapse of state institutions. Afghanistan under the Taliban is a well-known example. State failure is an alarming phenomenon that undermines global governance and adds to regional instability.

5) Organised crime. Europe is a prime target for organised crime, which has an important external dimension, namely trafficking in drugs, women, children and arms, which does not stop at the Union's borders. Such criminal activity is often associated with weak or failing states. For example, revenues from drugs have helped to undermine state structures in several drug-producing countries. Organised crime can have links with terrorism. In extreme cases, it can come to dominate the State (European Security Strategy 2003).

Latvian security policy is based on the National Security Concept. The National Security Concept is produced on the basis of the National Threat Analysis, which defines the strategic outlines, priorities and activities for the national threat elimination. The National Threat Concept states that the national security is the state's and its nation's ability to defend and secure its national interests and fundamental values – sovereignty of the Latvian Republic, territorial indivisibility and democratic system as stated in the

Constitution, as well as the state's internal security, which guarantees the observance of the human rights, public security and public protection. Latvian national interests also include the prerequisites required for ensuring the long-term development of the country and its population: retention of the lingual and cultural identities, maintenance of the defence system, provision of the economic growth and welfare of people. National interests include also the retention of the scientific and technical potential, provision of the endurance of the environmental development, development of the national infrastructure and telecommunications, maintenance of the internal political stability. Latvia's ability to provide the implementation of the national interests depend on such external factors as global and regional climates of international relations and co-operation, international economic situation and quality of the global ecological environment. National security policy and achievement of its goals is the responsibility of all the state institutions and the society in whole. On September 16, 2006 in the National Academy of Defence was organized seminar "Security Challenges and NATO in the 21st Century" and a new National Military Strategy was presented. The need for state security problem complex solving were stressed and role of police in this context looks very important.

3. Essence and features of a legal regime

Public order and security in a state can be viewed as a set of legal regimes. Word "regime" denotes "precisely set procedure of life, work, rest, sleep etc." (Tildes 2013).

Respective legal terms are political regime and state regime. The state regime characterizes actual content of functioning and interrelation of the supreme state administration institutions. In modern democracy when various legal regimes are introduced in the state administration, protection of human rights becomes particularly topical. The Constitution of the Republic of Latvia protects several human rights, including rights to freedom and inviolability (The Constitution 1992). At the same time some individual rights (rights to inviolability of privacy, home and correspondence, rights to move and choose place of residence, right to leave Latvia, rights to freedom of speech, freedom of association and freedom to join political parties and other public organizations, to freely choose occupation and job according to ones skills and qualification, rights to collective agreements and strikes) may be limited in cases provided by the law in order to protect rights of other individuals, the democratic state system, public security, wellbeing and morals. The political or state regime is legal when it is stipulated by legal provisions. The Constitution of the Republic of Latvia includes two specific state regimes: a state of exception and state of war (The Constitution 1992). Term "legal regime" is frequently used in some spheres of law, in other spheres it is used rarely whereas in some it not used at all. Legal regime determines framework of legal procedure both in general and regarding a particular time and place, physical and/or legal persons. Latvian legal science applies following definition of legal order: Legal procedure is procedure of public relations that is established by implementation of legality. Legal order is implemented legality (The Constitution 1992).

Therefore legal regime is mean of implementation of legal procedure. If we suppose that legal relations are divided into public and private, then we can divide legal regimes into: 1) public law regimes (constitutional regimes, administratively legal regimes, and criminal law regimes); 2) private law regimes (regimes of regulation of civil law relations and restrictions).

Though separation of public and private law often causes considerable difficulties and it can not always be clearly accomplished, this separation is of major importance. It is connected with establishment of a framework of administrative procedure in relation to evaluation of legality of the issued administrative acts. For example, Latvian legislation strictly stipulates that an administrative act is a legal act passed in the sphere of public law (Administrative). When determining legality of an administrative act in cases when there is doubt regarding separation of private and public law it is advisable to regard the disputable provision a provision of public law, because the primary sphere of activity of an institution (as understood by the administrative procedure) is the public law sphere (Briede 2003).

Bachrach (2000) singles out a general regime of operation of the state administration and special administratively legal regimes. These special regimes mainly represent provisions that prohibit something or establish a duty connected with zoning of territory and fixing of special status of an object (carrier of the regime) and special or thematic laws that introduce additional provisions for ensuring legal procedure. Regimes can be divided into federal, regional and local (Bachrach 2000).

In legislative acts legal regimes are often applied as integrated regimes , e.g., "special legal regime", "special

regime", "special protection regime", "the most favorable regime" etc. Thereby it is stressed that, firstly, these laws comprise several fields of law – administrative, constitutional, international, and, secondly, according to the type of regulation they refer to different rights and obligations of subjects, e.g., a regime of closed administratively territorial formation for the purpose of ensuring public order during mass events, a special regime in a zone of anti-terrorist operation etc.

Analysis of different opinions about classification of administrative regimes leads to some conclusions, e.g., an administratively legal regime is a legal regime in the field of administrative law, yet it influences legal relation in other spheres of law, including private law.

Therefore there are two options: 1) to consider all legal regimes in the sphere of state security administratively legal regimes as most Russian scientists do; 2) to consider these regimes as legal regimes in the sphere of state security where the leading part is played by administrative law provisions. In this case it must be noted that other spheres of law except administrative law will be dealt with only as much as it is necessary for exercising administration to ensure state security (to a limited extent).

Establishment of legal regimes for ensuring state security is widespread and reflects the variety of tasks and functions of the state. The more developed system of legal means and the more varied forms of legal activity, the more important is their integration and differentiation according to definite legal features. Legal regimes in the sphere of the state security are quite varied. Each of them is a unique legal instrument with management elements and their aim is to create optimum relations in a concrete, relatively narrow, but relevant sphere that ensures security of individuals, the society and state security.

4. Administratively legal regimes

According to general tasks and functions of administrative law as well as to the fact that today attempts are made to find the best composition of the state administration and self regulation, administratively legal regimes can be divided into two groups: 1) regulative regimes, 2) protection regimes.

Most administratively legal relations are regulative, i.e., they have a positive character. Legal relations of protection, as important as they may be, play only an auxiliary part in administrative law. Therefore in the system of administrative law they are derived from regulatory relations and their amount is relatively small. Yet recently due to more frequent breaches of provisions of public order and endangering of security of individuals, the society and state security, they start playing a more important role. Thus ensuring of security in various spheres of life is impossible without creating administratively legal regimes.

Legal literature points out that the institutions of public administration often spontaneously establish legal regimes in their own interests thereby causing a negative effect from the point of view of aims and tasks which the state administration has to fulfill in a democratic society. And vice versa in cases when administratively legal regimes adequately reflect peculiarities of processes of the state administration making both objects and subjects reach the set aims, a regime becomes a necessary element of the state administration institutions and an effective instrument of the state administration itself.

Therefore it can be concluded that administratively legal regime is a specific procedure of activity of subjects in various spheres of life in a state. It is laid down in laws and subordinate normative acts and is aimed at purposeful and functional activity of legal subjects in the sphere where it is necessary to utilize additional means for maintaining the required condition in a state. It can also be concluded that administratively legal regimes must be precisely regulated in the constitution, other laws and normative acts and they may not contradict international human rights. The mechanism of possibility for individual to apply in the administrative court with claim to heck legality of the issued administrative act helps to guaranteed consideration of human rights in the process of state administration and implementation of different legal regimes.

Administratively legal regimes can be divided into 3 groups. The first group consists of regimes that are mainly meant for ensuring security of individuals, the public and the state. These regimes include administratively legal regime of protection of the state secret, the regime of the state border, the regime of a closed administrative territory etc.

The second group is mainly established for ensuring public security. These include the systems of licenses and permits, the sanitary regime, the customs regime, the regime of road traffic safety etc.

The third group is comprised of integrated regimes

with the aim of maintaining defense ability of the state, public security and safety of individuals during natural, technological and social emergencies.

Depending on jurisdiction – state or self-government – administratively legal regimes may be divided into 2 groups: 1) state regimes that are determined and regulated by the government bodies; 2) local regimes that are determined by local self-governments in their territory. Several regimes refer to both groups of administratively legal regimes: technological emergencies, regimes of specially protected nature territories, sanitary regime during epidemics etc. Then the jurisdiction depends on dangerousness and scale of the emergency.

5. Special administratively legal regimes

Administratively legal regimes in the sphere of state and public security are inevitably connected with emergencies. In legal literature regimes that are established during emergencies are sometimes called extraordinary regimes in opposition to regular or ordinary regimes.

Extraordinary regimes that are frequently called special administratively legal regimes are regimes that are established to ensure life of inhabitants, economic activity and functioning of the state and self-government institutions. They are established in cases of extraordinary situations and authorize the state institutions to utilize extraordinary measures in order to normalize the situation and to restore legal procedure.

The choice of a special administratively legal regime depends on the level of crisis. Therefore following criteria can be set: level of intensity of impact of security threat, time aspect of course of an emergency, scale, complexity of the threat, its influence on public life, and the chain reaction character of an emergency. When evaluating an emergency, a competent authority has to choose a legal measure that will ensure stabilization of the situation, prevention of security threat, restoration of the regular course of life.

As we know emergencies of any type are connected with destabilization of public life, i.e., disruption of the ordinary course of life. Emergencies can be divided into: natural disasters (storms, hurricanes, rainstorms, flood, hail, severe cold, snowstorms, black frost, snow and ice banks, heat, drought, fires, etc.); technological disasters connected with leakage of chemical, biologically active and radioactive substances, electromagnetic and radioactive emission (industrial accidents, explosions, fires in industrial, agricultural or military objects, oil and gas pipelines, all types of traffic accidents, accidents in utility and electrical transmission networks, damage or breaks of dams, crashes of airplanes, missiles, space objects etc.); epidemics, epizooties and extremely dangerous infections; mass disturbances, terrorism; armed conflicts (Stańczyk 2011).

These negative factors because social tension therefore it is necessary to take additional measures for ensuring security and to impose stricter sanctions for breaches of the established order. Therefore extraordinary circumstances that were caused by an extraordinary situation influence character of social relations and require a change of forms and methods of the state administration and consequently an establishment of special administratively legal regimes.

Administratively legal regimes can be classified according to the criteria of "starting mechanism", i.e., the state institution that passes a legislative act which establishes, abolishes or amends a legal regime.

In this case the first group includes administratively legal regimes that are "started" by the legislator by passing, amending or abolishing a law, therefore a legal regime is enacted simultaneously with a law, but the state administration institutions have a duty to enforce this law and they do not have discretion to decide whether or not to carry out provisions enacting an administratively legal regime.

The second group includes legal regimes that are "started" by the executive institutions. These include two types of regimes. First, they are established, abolished or amended simultaneously with enactment of normative acts passed by the government. Secondly, the government can pass individual legislative acts within the framework of existing laws or normative acts. For example, in Latvia the Cabinet of Ministers proclaims a state of exception. The Parliament has to approve the decision, otherwise it loses validity upon proclamation (The law of Republic of Latvia...1992).

The third group includes administratively legal regimes that are enacted with a decision of a competent state administration or self-government institution. These regimes can be subdivided. Firstly, these cases often necessitate coordination of activity of institutions subordinate to several ministries; therefore the management headquarters of extraordinary situations are established and cooperation with

self-governments is very important. In the Republic of Latvia the relevant institution is the Crisis Control Centre subordinate to the Cabinet of Ministers. The Crisis Control Centre coordinates development of preventive plans of the state administration institutions, civilian – military cooperation and operational measures for prevention and elimination of a crisis.

This subgroup includes regimes which require cooperation among several state administration institutions under the guidance of the responsible ministry. For example, in the Republic of Latvia the Ministry of the Interior controls extraordinary situations connected with dangerous forest fires and other cases that involve civil defense measures. Secondly, an administratively legal regime is established by one responsible state administration institution. In many cases it is the police that are authorized by the law to perform the necessary measures for saving people, detaining criminal suspects, prevention of situations that endanger public security. The administratively legal regimes of this subgroup deserve deeper examination in the context of human rights, especially in those countries where the dominating policing methods are repressive and the police lack public trust.

As extreme conditions require undisturbed enforcement of individual and normative provisions, and maximum submission of an individual's will to the common aim, sometimes there are necessary special administratively legal regimes which are characterized by a definite prohibitive effect: decrease of means of horizontal coordination and harmonization, decrease of realization of individuals' constitutional rights in the administrative sphere and increase of coordination duties.

Special administratively legal regime for ensuring security is established when regular legal measures are not sufficiently effective, when it is necessary to unite legal measures in a set of procedures and forms of process, control and supervision functions as well as coercive measures that operate to warn, guard and protect individuals, the public and the state. This is realized by following means: 1) additional prohibitions and duties; the regime not only restricts behavior, but also provides preventive control of implementation of this requirement and special administrative measures that are aimed at establishing and maintaining the regime: state examination, state registration, implementation of economic activities that require prior application for a permission to realize certain rights; 2) a system of control and supervision of realization and requirements of the regime by physical and legal persons and government officials. This procedure is often connected with an opinion of the official who will decide on issuing of a permit (Teivans-Treinovskis, Jefimovs 2012).

The control system is connected with 'full' or random check of keeping of the rules, operational investigation measures, preventive measures and responsibility measures, technical and organizational maintenance of the set regimes that allows to effectively prevent and detect breaches of the regime. Such measures include use of vehicles, means of communication and special equipment.

Special administratively legal regimes must be provided for by the legislation. Usually the law stipulates the type of regime and its carrier, rules of establishment, the subject that administrates the regime, measures of the regime. As special administratively legal regimes in security sphere are usually connected with restrictions, coercion and responsibility, in a democratic society they must be formulated in laws and normative acts. If these restrictions are not provided by the law, their enforcement may possibly cause violations of legality and human rights.

The carrier of a special administratively legal regime is territory with an emergency. This territory is determined according to the spread of influencing factors with the aim of preventing further spread of threat. Such territory is designated by description of borders of territorially- administrative formations, but it can be directly connected with the source of threat.

The borders of an emergency situation zone are set by the manager of elimination of emergency by coordinating it with the state institutions in the territory where the emergency has occurred. The object of an extraordinary situation is social relations that influence the extent and character of security threat and public order and life processes. It depends on the type of emergency and the established regime.

The choice of an extraordinary regime for ensuring of security depends on crisis level of the emergency and its elements: level and type of security threat, character of influencing factors, scale and time aspect of the emergency, character of the chain of consequences.

Special administratively legal regimes in security sphere always have provisional character – they are enforced during the emergency. On one hand, the law puts restrictions on duration of emergencies, but on the other

hand the duty of the state institution that has established the regime, is to regularly revise necessity of the regime and to return to ordinary legal regulation.

Conclusions

The function of maintaining order and security in a state is called a policing function. Execution of the policing function is within the jurisdiction of the law enforcement agencies. The maintenance of legal procedure is a precondition for implementation of the doctrine of a rule of law. Legal regime is closely connected with the notion of legal procedure, therefore it is clear that investigation and classification of legal regimes has both theoretical and practical significance.

Law can be divided into public and private law. Legal regimes have the same classification. However in practice the state administration institutions are mostly involved in enforcement of state security, therefore their regulation belongs to the sphere of administrative law. Thus we can point out administratively legal regimes which refer only to the public law sphere. When it is complicated to clearly decide which sphere is involved it must be presumed that it is the public law sphere.

In extraordinary cases when it is necessary to ensure state security, maintain public order and security and restore the regular rhythm of life sometimes the responsible state institutions require additional powers that are enacted according to the law. According to the level of dangerousness of the extraordinary situation several special administratively legal regimes may be established. Under Latvian legislation they include 1) emergency; 2) exceptional situation; 3) state of war. These special administratively legal regimes must be distinguished from administrative legal regimes that are established in less dangerous extraordinary situations, that is, the state administration institutions operate according to regular legislative acts though the situation in its terms is similar to the one when the above mentioned legal regimes can be established.

During policing public order and public security in the framework of extraordinary legal regimes police must issue many administrative acts. According substance of notion of extraordinary situation police administrative acts didn't issue in written form. Thereby possibilities for checking of legality of theses administrative acts in administrative court is limited and it means that there is heightened level of risk concerning possible violations of human rights.

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