



International Federation of  
Red Cross and Red Crescent Societies

# **International Disaster Response Law Project**

## **Report on international legal mechanisms regulating disaster response in Poland**

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# **Report On Legal Mechanisms Regulating Disaster Response in Poland**

## **Historical background**

Disaster response law in Poland has a long tradition. Even prior to World War II, Polish authorities were acutely aware of the unpredictability of disasters and their consequences for those affected, prompting the signing of the Convention on Establishment of the International Union for Assistance in 1933. This convention provided that in cases of disasters so extraordinary that they exceeded the forces and means of an affected nation, the Member States of the Convention should go to the aid of the victims.

In more recent times, such general declarations have become insufficient, requiring more precise legal mechanisms.

## **IDRL in the 1990's**

In the beginning of the 1990s, the European trend to enter into closer international relations was clearly evident in Poland and many bilateral and multilateral international agreements were signed with the neighbouring countries, as well as with more distant partners. Some of these agreements were on the governmental level, but in some instances the cooperation was between state public authorities, for example the Polish General Headquarters of the State Fire Service initiated agreements on the elimination of the consequences of disasters with analogous authorities of Lithuania and Germany.

It has often been the desire to improve inter-State cooperation and later, mutual assistance, rather than catastrophes themselves, which have been the primary reasons for the negotiation of agreements on aid in cases of catastrophes, natural disasters and technological accidents. For example, the floods in Southern Poland in July 1997 did not inspire the conclusion of any agreements, the negotiations for which had already begun, but merely confirmed the need for more precise international regulations.

Even though the process of creating these legal instruments dates back to the beginning of the 1990's, many international agreements regulating disaster response law have not yet entered into force. In spite of relatively quick negotiations and the signing of agreements, in many cases it is the time-consuming national procedures of ratification which have delayed their entry into force. As a result, only a few are binding<sup>1</sup> and some will come into force very soon<sup>2</sup>.

The agreements with Germany on disaster response law (including those with the neighbouring German regions) were the consequence of the Treaty between the Republic of Poland and the Federal Republic of Germany on Confirmation of the Frontier of 1992<sup>3</sup> which provided in art.17 that the Parties shall cooperate for the purpose of mutual assistance in cases of disasters and serious events. The Agreement on Mutual Aid in Case of Catastrophes and Natural Disasters or Other Serious Events between these two countries, which came into force in 1999 regulates the above-mentioned cooperation in more detail.

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<sup>1</sup> Agreements with the Federal Republic of Germany and Russian Federation, as well as agreements with Saxony, Brandenburg and Mecklenburg

<sup>2</sup> Agreements with the Czech Republic and with Slovakia

<sup>3</sup> Journal of Laws of the Republic of Poland 1992, No. 14, item 56

However, the absence of this agreement in 1997 when Poland was affected by severe floods, was no obstacle for Germany in providing effective assistance for the victims. Thus it would appear that the gap caused by the slow ratification of the agreements on disaster response law is somehow filled by more general agreements on friendly and good-neighbourly cooperation signed by the Republic of Poland with a number of states. These include:

- Treaty between the Republic of Poland and the Republic of Belarus on good-neighbourhood and friendly cooperation, signed in Warsaw on 23<sup>rd</sup> June 1992 (Journal of Laws of the Republic of Poland 1993, No.118, item 527)
  - Art. 21 provides that the Parties shall intensify the cooperation in reduction and elimination of technological accidents and natural disasters effects.
  - Section 2 of this article provides that the Parties, aware of the consequences of Chernobyl catastrophe, shall take particular efforts to minimize and eliminate its effects. Each Party is obliged to inform immediately the other Party of the appearance of radioactive, chemical or biological threats.
- Treaty between the Republic of Poland and Russian Federation on friendly and good-neighbourly cooperation, signed in Moscow on 22<sup>nd</sup> May 1992 (Journal of Laws of the Republic of Poland 1993, No.61, item 291)
  - Art. 11 sec. 2 provides that the Parties shall cooperate and provide assistance for the purpose of the prevention and elimination of ecological dangers and natural disasters, particularly in the regions close to the border. Each Party shall inform the other Party on such dangers and disasters or on possibility of their appearance.

The above-mentioned Treaty has been supplemented in the aspect of disaster response law by the Agreement between the Republic of Poland and the Government of Russian Federation on cooperation in preventing industrial breakdowns, natural disasters and in elimination of their effects, signed on 25<sup>th</sup> August 1993, which came into force in 2002.

- Treaty between the Republic of Poland and the Republic of Estonia on friendly cooperation and Baltic good-neighbourhood, signed in Tallin on 2<sup>nd</sup> July 1992 (Journal of Laws of the Republic of Poland 1993, No.121, item 536)
  - Art.10 sec.3 provides that the Parties shall cooperate and assist each other for the purpose of the prevention and elimination of ecological dangers and natural disasters. Each Party shall inform the other Party immediately of such dangers and disasters or of the possibility of their appearance.
- Treaty between the Republic of Poland and the Republic of Latvia on friendship and cooperation, signed in Riga on 1<sup>st</sup> July 1992 (Journal of Laws of 1993, No.114, item 502)
  - Art.10 provides that the Parties shall cooperate and provide assistance for the purpose of the prevention and elimination of ecological dangers and natural disasters. Each Party shall immediately inform the other Party of such dangers and disasters or of the possibility of their appearance.

- Treaty between the Republic of Poland and the Republic of Lithuania on friendly relations and good-neighbourly cooperation (Journal of Laws of the Republic of Poland 1994, No.122, item 594)
  - The Treaty provides that the Parties shall cooperate in the reduction and elimination of transborder pollution and disasters.
- Treaty between the Republic of Poland and Moldova on friendship and cooperation, signed in Warsaw on 15<sup>th</sup> November 1994 (Journal of Laws of the Republic of Poland 1996, No.76, item 363)
  - Art.10 sec. 2 provides that the Parties shall cooperate and provide assistance for the purposes of the prevention and elimination of natural disasters and they shall inform each other immediately of such disasters or the possibility of their appearance.
- Treaty on friendship and cooperation between the Republic of Poland and the Republic of Greece, signed in Athens on 12<sup>th</sup> June 1996 (Journal of Laws of 1998, No.129, item 852)
  - Art.14 provides that on the basis of their positive experience, the Parties shall develop their cooperation in forecasting natural disasters as well as the prevention and elimination of effects of such disasters.

Even though many other agreements on friendly cooperation signed by Poland do not contain express provisions on disaster response, they may constitute grounds for assistance in cases of natural or technological catastrophes. A good example is the agreement between Poland and Turkey, which, although using more general terms, was a sufficient basis for sending Polish rescue teams and equipment to Turkey for the elimination of effects of an earthquake.

Moreover, there are some international agreements that might apply in case of threat of floods, for example:

- Agreement between the Republic of Poland and the Federal Republic of Germany on cooperation in water-supplies management and on border-waters, signed in Warsaw on 19<sup>th</sup> May 1992 (Journal of Laws of the Republic of Poland 1997, No.11, item 56)
  - Provides cooperation in protection from flooding and in cases of danger connected with ice drifting as well as cooperation in the construction of dams, etc.
- Agreement between the Republic of Poland and the Government of Ukraine on cooperation in water-management concerning border-waters, signed in Kiev on 10<sup>th</sup> October 1996 (Journal of Laws of the Republic of Poland 1999, No.30, item 282)
  - Provides in art.1.9 and 1.10 regulations very similar to those mentioned above.

Poland's negative experience in relation to the Chernobyl catastrophe was most likely one of the reasons that Poland became a member of the Convention on Immediate Informing on Nuclear Accidents, signed in Wien on 26<sup>th</sup> September 1986 (Journal of Laws of the Republic of Poland 1988, No.31, item 216).

Overall, despite the present work on the establishment of legal instruments on international disaster response law, there has not been such significant progress as there was in the 1990s. Nevertheless, the efforts are constant and it must be hoped that the various international agreements and treaties shall come into force soon.

## **Extraordinary Measures In The Light Of The Polish Constitution**

The Constitution of the Republic of Poland, adopted on 2<sup>nd</sup> April 1997, regulates the types of extraordinary measures as well as the circumstances and procedures of their introduction and their legal consequences, particularly regarding the situation of citizens.

The Constitution distinguishes three types of extraordinary measures: a state of martial law, a state of emergency and a state of natural disaster. Moreover, the Constitution establishes 6 principles referring equally to all extraordinary measures. These are as follows:

1. Rule of exception – it means that an extraordinary measure may be introduced only in the situation of a ‘particularly grave threat’ and only if ordinary constitutional measures are insufficient
2. Rule of legality – means that:
  - a) extraordinary measures may be introduced only upon the basis of statute
  - b) contents of extraordinary measures must be determined by statute – it especially concerns the principles for activity of organs of public authority as well as the degree to which the freedoms and rights of persons and citizens may be subject to limitation for the duration of any extraordinary measure
  - c) loss of property suffered in the period of duration of extraordinary measures, resulting from limitation of the freedoms and rights of persons, should be compensated by the State
3. Rule of proportionality – means that the activities undertaken in consequence of the introduction of extraordinary measures, so particularly limitations of the freedoms and rights of persons must be adequate (proportional) to the degree of threat. In other words, activities incommensurably interfering with legal situation of a person lie outside the scope of extraordinary measures.
4. Rule of sense of purpose – means that the activities undertaken in consequence of introduction of extraordinary measures should be aimed at restoration of the normal functioning of the State as quickly as possible. Appropriate provision of the Constitution emphasise the temporary nature these of extraordinary measures.
5. Rule of legal system protection – means that in the period of duration of extraordinary measures certain ‘sensitive’ legislative issues (the Constitution, the acts on elections to parliament and organs of local self-government) as well as the acts on extraordinary measures shall not be subject to change.
6. Rule of organs of authority protection – means that during a period of introduction of extraordinary measures as well as during 90 days after its termination:
  - a) the term of office of the parliament may not be shortened,
  - b) a nationwide referendum may not be held,
  - c) elections to the Sejm, the Senate (these are the chambers of Polish parliament) and to the Presidency may not be held. The term of office of all these organs shall be adequately prolonged.

The Constitution determined that all types of extraordinary measures shall be regulated in statutes. According to this provision, three statutes regulating extraordinary measures have been adopted:

1. Act on a State of Martial Law and on Competences of the Commander-In-Chief of the Armed Forces, adopted on 29<sup>th</sup> August 2002 (Journal of Laws of the Republic of Poland No. 156, item 1301)
2. Act on a State of Emergency, adopted on 21<sup>st</sup> June 2002 (Journal of Laws of the Republic of Poland No.113, item 985)
3. Act on a State of Natural Disaster, adopted on 18<sup>th</sup> April 2002 (Journal of Laws of the Republic of Poland No. 62, item 558)

Among these three extraordinary measures a state of martial law is of the most radical character. State of martial law may be introduced only in three situations: 1) external threats to the State, 2) acts of armed aggression against the territory of the Republic of Poland, 3) when an obligation to the common defence arises by virtue of international agreement. Regulation on declaration of a state of martial law is issued by the President of the Republic of Poland on request of the Council of Ministers.

A state of emergency may be introduced only in three situations: 1) in case of threats to the constitutional order of the State; 2) in case of threats to security of the citizenry; 3) in case of threats to security of public order. Regulations on declaration of a state of emergency are issued by the President of the Republic of Poland on request of the Council of Ministers. A state of emergency may be introduced in a part or upon the whole territory of the State. It must be introduced for a definite period of no longer than 90 days (as distinct from a state of martial law). Extension of a state of emergency may be made only once for a period no longer than 60 days and with the consent of the Sejm (lower chamber of Polish parliament).

A state of natural disaster is aimed at solidarity in coping with nature adversities. It is defined as a natural catastrophe or a technological accident, with consequences that may threaten the lives and health of a large number of persons, property or a significant area of the environment. Aid and protection may be effectively undertaken using extraordinary measures. A state of natural disaster is introduced by regulation of the Council of Ministers, in a part or upon the whole territory of the State for a definite period no longer than 30 days. An extension of a state of natural disaster, always for a definite period, may be made with the consent of the Sejm.

All above-mentioned statutes on extraordinary measures regulate widely and include details relating to the principles of activity for the organs of public authority, as well as the scope of limitations on the rights and freedoms of persons.