LEGAL SECURITY AND COUP D'ÉTAT –
HISTORICAL AND MODERN PERSPECTIVES

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ABSTRACT

The article discusses the relationship between the concepts of "legal security" and "coup d'état" on the basis of the evolution of these concepts over the centuries. The analysis of the terms which the author is interested in, adopted as the subject of this study, leads to the conclusion that, in particular, the concept of "coup d'état" is often mistakenly refereed to as a "revolution" or a "putsch". A political upheaval, one of the methods of which is a coup d' état, should be regarded, in the light of the research carried out, as deviating from the concept and character of a social upheaval. In the case of a political upheaval, the legal security of the individual is usually protected as before, and a possible lack of such security should only be treated as a result of the natural tendency of the individual to protect his or her legal status within a state organisation. It is only with changes of social (class) character, which may be an indirect consequence of a political upheaval, that the addresses of legal norms may have justified concerns about their legal safety.

Key words: state, democracy, legal security, coup d'état, palace revolution, legitimacy

1. TERMINOLOGICAL REMARKS

Before I proceed to a detailed analysis of the issues related to the relationship between the concepts of "legal security" and "coup d' état", and

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the possible consequences of a coup against such security, I am obliged to explain to the reader the basic concepts concerning the issues discussed below, without which it is impossible to understand the relationships that exist between them. For a lawyer in particular, and for every scholar in general, who embarks on an logical and linguistic analysis of the research subject, the most important issue should be the terminology as the starting point of the investigation. Unless the terminology is described in detail, any academic argument is certainly pointless or its outcome may prove to be erroneous.

Let us therefore try to define "legal security" and "coup d' état" as concepts underlying this discussion. Obviously the characteristic feature of definitions is that they are of a different nature, depending on the adopted research methodology. However, it is worth remembering the words of *Karl R. Popper*, stating that in the case of the "method" of research it does not matter what methods the researcher uses as long as he or she studies an interesting problem and does indeed attempt to solve it[1]. Both "legal security" and "coup d' état" can be discussed from the perspectives of historiosophy, the history of politics, the philosophy of law, the science of constitutional law, science of criminal law, or can generally be discussed from the point of view of politics.

What is "legal security" then? According to Anotoni Kość, the concept of "legal security" is one of three elements of the idea of law, along with concepts of "justice"[2] and purposefulness[3]. These three elements, or tendencies, of the idea of law are in the relation of necessary complementarity to one another, constituting, in the words of the German lawyer and philosopher *Gustav Radbruch* (1878-1949), a kind of "unity in the trinity"[4]. Jadwiga Potrzeszcz emphasises that analysing the concept of legal security is often combined with addressing problems in the area of the creation and application of law, problems which usually involve the value

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[1] K.R. Popper, Logika odkrycia naukowego, translated by U. Niklas, Warszawa 1977, p. 22.

[2] For more about the essence of justice see: W. Łączkowski, Prawo a sprawiedliwość, [in:] Abiit, non obiit. Księga poświęcona pamięci księdza profesora Antoniego Kościa SVD, Lublin 2013, pp. 213-220.

[3] A. Kość, Podstawy filozofii prawa, Lublin 1998, p. 204.

[4] Ibidem.

of legal security, quite frequently identified the values of legal security the protection of trust in the law[5]. It is worth pointing out that the idea of legal security was first put in the foreground during the Enlightenment, whose main political purpose was to overcome the uncertainty and defencelessness of the citizen in relation to the omnipotence of the absolutist police state, in which the idea of purposefulness unambiguously prevailed. In the Enlightenment era, a citizen's freedom began to mean freedom from the unrestrained and arbitrary judgement of state authorities[6].

The famous French philosopher of the Enlightenment Era François-Marie Arouet "Voltaire" wrote that: "Being free means nothing else than being dependent on a statute"[7]. When making a reference to this passage, Professor Antoni Kość states that the following are expected from a statute: legal security, clarity, stability and the predictability of its legal effects[8]. The concept of "legal security" was also put to the foreground during the era of legal positivism as a direct result of the political concept of a liberal state of law which should guarantee its citizens secure and stable legal positions. Antoni Kość goes on to write that what corresponds to this tendency is a pursuit to build the legal system using principles and legal norms which are clearly and logically determined and also unambiguously interpreted[9].

Problems which are usually classified as problems in the field of legal security are those which are related to the principles of the protection of acquired rights and interests in the course of the proceedings the role of intertemporal law, *vacatio legis*[10], the *lex retro non agit* principle, general reference clauses, the problem of uniform application of law and issues related to tax

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[5]   J. Potrzeszcz, Bezpieczeństwo prawne z perspektywy filozofii prawa, Lublin 2013, p. 355.

[6]   A. Kość, op.cit., p. 206; cf. H. Kaczmarczyk, Wolność i jej rodzaje w ujęciu Friedricha A. Hayeka, [in:] Abiit, non obiit. Księga poświęcona pamięci księdza profesora Antoniego Kościa SVD, Lublin 2013, pp. 753-765.

[7]   Cf. Voltaire, O wolności człowieka, [in:] idem, Elementy filozofii Newtona, translated by H. Konczewska, Kraków 1956, pp. 21-31.

[8]   A. Kość, op.cit, p. 206.

[9]   Ibidem.

[10]   Cf. A. Kasprzyk, Instytucja vacatio legis – pojęcie i znaczenie dla polskiego prawodawstwa, [in:] Abiit, non obiit. Księga poświęcona pamięci księdza profesora Antoniego Kościa SVD, Lublin 2013, pp.139-155.

law. Unfortunately, Polish academic literature rarely discusses theoretical problems in the field of legal security, such as those covered by this analysis.

Legal security is understood by Jadwiga Potrzeszcz as a state achieved by means of positive law, with two aspects of this concept: (1) legal security in an objective sense, referring to a state in which legal means protect welfare, safety and interests of individuals and in which there is an efficient system protecting these means; this kind of legal security may arise independently of the awareness of the people protected by such security; (2) legal security in a subjective sense, which may be identified with a feeling of legal security individuals have; this feeling is undoubtedly built and strengthened by the awareness of a given individual who feels safe under the rule of law[11]. Such legal security may have rational ground resulting from the sound knowledge of the binding law and how it is interpreted and applied. Jadwiga Potrzeszcz ultimately defines legal security as a state achieved by means of statutory law, in which the welfare, happiness and interests of individuals are protected in the most complete and effective way possible. This means that the purpose of this law is to safeguard the welfare, happiness and interests of individuals[12].

Józef Krukowski stresses that when discussing the legal security of a state, it is necessary to determine what is the role of the law in the process aimed at ensuring and maintaining the state of safety. Legal security is generally accepted to be based on obeying the law in force, and thus lack of security is due to an infringement of the law. However, it should be noted that security also depends on the quality of the law[13].

Andrzej Stelmachowski (1925-2009) presented a somewhat different approach. In his opinion – which is stressed by Bogdan Szlachta – "legal

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[11]   J. Potrzeszcz, Bezpieczeństwo prawne z perspektywy…, p. 273, see also eadem: Legal security – synthetic presentation, „Teka Komisji Prawniczej”, Polska Akademia Nauk, Oddział w Lublinie, vol. IX, Lublin, pp. 140-152.

[12]   J. Potrzeszcz, Bezpieczeństwo prawne a pewność prawa – perspektywa filozoficzno-prawna, [in:] Bezpieczeństwo prawne państw demokratycznych w procesie integracji europejskiej: Polska-Słowacja-Ukraina, (ed.) J. Krukowski, (ed.) J. Potrzeszcz, (ed.) M. Sitarz, Lublin 2016, p. 288.

[13]   J. Krukowski, Bezpieczeństwo państw demokratycznych w procesie integracji europejskiej: tożsamość narodowa a społeczeństwo obywatelskie. Doświadczenia i perspektywy, [in:] Bezpieczeństwo prawne państw demokratycznych…, p. 28.

security" does not refer to the state, the economy or individuals because it is defined as "stability of rules of conduct in society, including in particular the predictability of the conduct of state authorities"[14]. In addition, Bogdan Szlachta draws attention to the problems related to any attempts to reduce "legal security" to the stability of the rules of conduct in society, including in particular the predictability of the conduct of state bodies since such a reduction leads to disregarding the limitations indicated by natural law approaches – both the so called classical and modern approaches (associated with the so-called liberal approach). Indeed, as Bogdan Szlachta goes on to write, from the point of view of "the stability of the social and political system", what can be considered as the main factor determining the "legal" nature of norms is the obedience of citizens based on the recognition of the "legitimacy" of the state and the political power as a system of institutions, and thus acceptance of norms established by the state bodies designated for that purpose as institutions which are competent to apply "justified coercion"[15].

The concept of "legal security" is sometimes identified with the concept of "national security" or even "public security". These are, however, not related concepts. As Professor Edward Ura points out, state security primarily means protecting the political system against external and internal enemies, in particular combating espionage and sabotage carried out by intelligence and counter-intelligence services of foreign states and other foreign centres. National security may also be threatened by hostile activities within the state against its political and economic interests and the interests of its citizens, and also against allied states[16].

Public security is a situation in which all the citizens who live in a state and society are not endangered in any way, regardless of the source of the danger. As far as the concept of public order is concerned, it refers to those tasks of internal affairs bodies and other state administration bodies, as

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[14] B. Szlachta, Koncepcje bezpieczeństwa prawnego w Europie po II wojnie światowej – perspektywa politologiczna, [in:] Bezpieczeństwo prawne państw demokratycznych…, p. 9.

[15] Ibidem, pp. 11-12. I discussed legal coercion elsewhere, see: M. Konarski, M. Woch, Siła i przemoc jako atrybut władzy państwowej, [in:] Prawa człowieka w państwie, (eds) M. Konarski, M. Wielec, M. Woch, Warszawa 2014, pp. 93-122.

[16] E. Ura, Prawne zagadnienia bezpieczeństwa państwa, Rzeszów 1988, p. 123.

well as to certain social organisations which are directly connected with the maintenance of order enabling the normal development of life in the state[17]. Ultimately, therefore, the term "protection of national security, public security and public order" should be understood to mean the entire framework of legal, organisational and technical instruments at the disposal of the state and are aimed at ensuring the security of the state, its stability and conditions for the development of the political system, the protection of constitutional principles with particular regard to the principle of respect for the rule of law, including civil rights and the principles of social coexistence, and the protection of relations governed by moral standards and customs[18].

2. TOWARDS COUP D'ÉTAT

Once the concept of "legal security" has been defined, let us now try to define the concept of "coup d'etat" – the key concept for this discussion, which is very often misunderstood. In particular it is erroneously identified with other related terms such as "putsch", "palace revolution" or "revolution".

The Polish phrase "zamach stanu" is the equivalent of the French expression "coup d'etat". In the Polish language the term "zamach" usually refers to an attack on a person, sometimes a place or some imponderables. Used with a noun in the genitive case would tend to indicate the perpetrator. For example "zamach Piekarskiego" obviously refers to an attempt made by Michał Piekarski, coat of arms Topór, to assassinate King Sigismund III Vasa (1566-1632) in Warsaw in 1620. However, "zamach stanu"is an expression denoting, in the speaker's intention, "zamach" (attack) against "stan", i.e. a "state" or "the political system" of a state. Such an understanding of the word "stan" creates a linguistic problem in Polish.

A coup d'état is a phenomenon of political history and politics. Any coup d'état is caused by some *raison d'état*, actual or apparent, created for

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[17]   Ibidem, p. 124.
[18]   Ibidem, p. 126.

the purpose of gaining power, often however for itself. The classic coup d' état is carried out by a part of the elite of the society in power or in opposition, which means that it is directed against the rest of the elite.

The key issue concerning a coup d'état is the problem of political power and its change, which is usually caused by a part of the previous political elite, usually in an alliance with the armed forces[19]. In contrast to a revolution, a coup d'état, therefore, is not triggered by violent transformations from the bottom up, which result in a change of power and political elites[20]. A coup d'état could be characterised as a top-down process, carried out by individuals or groups belonging, to some degree to the power elite, usually – as indicated above – in an alliance with the armed forces, whose members often become leaders of a coup d'état.

Marek Bankowicz cites the typology of coups proposed by William R. Thompson, who distinguished: successful coups, aborted coups and compromise coups. Successful coups and aborted coups may end in two ways, namely: 1) the change of political power is gradual, spread over time, because the resistance to the perpetrators of the coup has proved so strong that they had to partially abandon their original plans; 2) both the perpetrators and the defenders of the current government did not have sufficient strength to achieve their goals, and as a consequence a temporary solution, conditionally accepted by both sides, was developed in the system of power and subsequent events will determine the final balance of power and political direction of the state[21].

A political upheaval may concern only part of the system and may consist in the creation or abolition of any power. There are two basic forms of political upheaval: (a) a coup d' état – an upheaval by one person or a group of people coming from the circle or stratum of those in power. Its technique is a military or paramilitary conspiracy; (b) a putsch – by

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[19] M. Konarski, Zamach stanu w perspektywie prawno-historycznej na przykładzie Rewolucji Francuskiej 1789-1799, [in:] Przestępstwa przeciwko bezpieczeństwu i porządkowi publicznemu, (ed.) W. Lis, Lublin 2017, p. 19 ff.

[20] H. Arendt pointed out that only "where there is a change in the sense of a new beginning, where violence is used to establish a completely different form of a political system and where liberation from oppression at least seeks to constitute freedom, then we can talk about revolution", eadem O rewolucji, translated by M. Godyń, Warszawa 2003, p. 39.

[21] M. Bankowicz, Niedemokratyzmy, Kraków 2011, pp. 204-205.

a person or people outside those in power, which is the work of political "outsiders" (e. g. the fascist "March to Rome" of 1922, an attempt at the assault by the fascist "leagues" in Paris on 6 February 1934, or the Algerian "week of barricades" of January 1960)[22]. Both forms are characterised by the use of violence, but without any long-term armed action with a large territorial or social range[23]. Interestingly, as early as in the Antiquity, it was already considered to be more threatening to the security of the state and citizens than a war with external enemies – thus all-out war. According to *Plato,* a political upheaval is a revolt and calls it "the hardest war of all"[24].

Frequently, especially in the media, the term "coup d'état" is identified with the term "revolution". The question arises what the "revolution" is. When Nicolaus Copernicus (1473-1543) wrote *"De revolutionibus orbium coelestium",* the term revolution was appropriated by astronomers which was associated with a peaceful, majestic, repetitive and cyclical movement of celestial bodies[25]. People were fascinated by violent political and social changes as early as in Herodotus' (c. 484 BC- c.426 BC) and Thucydides' (460 BC-395 BC) times. Also for Aristotle (384 BC-322 BC), Polybius (200 BC-118 BC) and Cicero (106-43 BC) these changes were fascinating[26]. For philosphers of the Enlightenment, the concept of revolution most often expressed the idea of a great, fundamental change. There is therefore a willingness to write about a mental revolution, *révolution des espirits*: That is how Jean Le Rond d' Alembert (1717-1783) described the Renaissance, Reformation and the Age of Enlightenment[27].

According to Étienne Bonnot de Condillac (1714-1780), René Descartes (1596-1650) gave rise to a scientific revolution. Guillaume

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[22] J. Baszkiewicz, Wolność, równość, własność. Rewolucje burżuazyjne, Warszawa 1981, p. 18.

[23] M. Chmaj, M. Żmigrodzki, Wprowadzenie do polityki, Lublin 1995, p. 246 ff.

[24] Platon, Prawa, translated by M. Maykowska, Kraków 1960, 629 d, pp. 11-12.

[25] J. Baszkiewicz, op.cit., p. 5.

[26] Ibidem.

[27] Cf. J. D'Alembert, Wstęp do encyklopedii, translated by J. Hartwig, Kraków 1954, pp. 5-134. F. Engels calls the Renaissance and Reformation a "progressive upheaval", the greatest of all mankind's experiences., eadem, Dialektyka przyrody, translated by T. Zabłudowski, Warszawa 1979, p. 7.

Raynal (1713-1796) wrote about a revolution in world trade. For Voltaire, already mentioned above, the whole history of humanity is a "great theatre of revolutions" – revolution, understood as breakthroughs in the history of civilisation. Similarly, for Jean-Jacques Rousseau (1712-1778) revolutions are great transformations of the civilisation (inventions of tools, agriculture, metallurgy) and although this "Genevan philosopher" is treated as a spiritual father of the French Revolution, he warned against a political revolution, writing that it might turn out to be more dangerous than the evil which it was supposed to eliminate and "which one neither must desire or predict"[28].

However, it was not before the American Revolution that an attempt to provide a theoretical reflection on the revolutionary process in political terms was made. American President Thomas Jefferson (1743-1826), said that the revolution turned the people's eyes to the obvious truth that "the mass of mankind has not been born with saddles on their backs, nor a favoured few booted and spurred, ready to ride them legitimately, by the grace of God.". The American Revolution swept away the relics of the feudal system, which in fact the North American colonies only knew in a residual form. The monarchic system itself constituted these relics and was later replaced by the republican system. The prevailing position of the Anglican Church was also abolished. The feudal rents paid to the king, *fideicommissum* and inheritance privileges of the eldest sons were eliminated. This American "Gentlemen's Revolution" took place without any violent acts, any social reforms, without abolishing slavery and without the radicals growing impudent, as was the case, for example, during the French Revolution.

Nicolas de Condorcet (1743-1794), when comparing the revolutions on the European and North American continents, wrote that the French revolution was more comprehensive than in America and, as a consequence, more violent, even though it was thanks to the American revolution that its idea became popular and soon spread to Europe. He argues that the Americans, unlike the French, were satisfied with civil and criminal law, neither did they have to reform the flawed tax system nor overthrow a feudal tyranny, hereditary social differences, privileged wealthy

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[28] J.J. Rousseau, Trzy rozprawy z filozofii społecznej, translated by H. Elzenberg, Kraków 1956, p. 102.

and powerful corporations or the system of religious intolerance, thus limiting themselves to establishing a new authority in place of the one that the British people had previously exercised over them[29].

The concept of revolution, derived from the Latin term "revolutio", means "rotation" or "turnover" and it was originally used in natural sciences. On the ground of social sciences, this term is understood ambiguously, and let us assume for the needs of our discussion that it means fast and armed seizure, with broad support of materially handicapped masses[30], of the centre of political decision in the state by organized groups or political parties which previously, openly or in conspiracy, fought the centre. In contrast to political upheavals, the revolution may be sudden and violent, but it is political process of change that is socially and politically more extensive[31]. The simplest definition of a "revolution" is change of political power entailing a radical change of the political, social or economic system[32]. The basic prerequisite for the outbreak of a revolution is the inability of existing political structures and institutions to meet new social needs, which numerous members of society have and are willing to sacrifice a lot to fulfil them, as they believe that only immediate and radical solutions are adequate[33].

Crises of the legitimacy of power usually occur during the transition to a new social structure if: (1) the status of the main conservative institutions is threatened during the period of structural changes; (2) all major social groups do not have access to the political system during the transition

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[29] N. Condorcet, Szkic obrazu postępu ducha ludzkiego poprzez dzieje, translated by E. Hartleb, Kraków 1957, pp. 178-179.

[30] However, it is important to bear in mind the difference between the "political revolution" and the "social revolution", as G. Lukács points out when he writes that the political revolution sanctions a socio-economic state of affairs which, in economic reality, has at least partly already paved the way for itself. A revolution forcibly replaces the old legal system, perceived as "unfair", with new, "just" and "fair" laws. The social environment is not subject to any radical overlapping. The social revolution, on the other hand, is aimed at a change in this environment, G. Lukács, Historia i świadomość klasowa, translated by M.J. Siemek, Warszawa 1988, p. 473.

[31] M. Chmaj (ed.), Encyklopedia polityki, Kraków 1999, p. 255; cf. M. Waldenberg, Rewolucja, Warszawa 1964, pp. 16 ff.

[32] Cf. S. Ehrlich, Norma. Grupa. Organizacja, Warszawa 1998, pp. 182-183.

[33] M. Bankowicz, Zamach stanu: studium teoretyczne, Kraków 2009, p. 62.

period, or at least until they have determined their political demands[34]. Once a new social structure has been established, if the new system is not able to meet the expectations of the main groups for a period long enough to legitimise itself on the new basis, a new crisis may start[35].

There are also other concepts which are often identified with them. These include a rebellion or guerrilla. A rebellion is often referred to as a revolt or an uprising, and is a violent social upheaval against existing political power, accompanied by the use of violence. As Marek Bankowicz writes, a rebellion differs from a revolution in that it is limited to a certain area and does not cover the entire country, and also in that an active role is played by a specific social groups, while other social strata tend to remain passive[36].

Guerrilla is a kind of partisan war and its victory gives a result similar to an effective coup since there is a change in the political elite and the system of governance, but there is no complete social and economic change[37]. In the case of a civil war conducted by guerrilla methods, there is a long-term armed struggle, and in the case of a coup d' état, the conflict may be limited only to short-term riots[38].

3. CAUSES AND METHODS OF A COUP D'ÉTAT

Since the biblical times the history of our civilization knows many actual situations that science has qualified as a coup d' état – despite the fact that in the past this concept was not known in the sense attributed to it today. One might mention here for example the biblical story of *King Solomon*, who seized power from his father *King David*[39].

However, it was not a "classical" coup but rather a palace revolution or a palace conspiracy, if only because there were no changes of systemic

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[34] T. Biernat, Legitymizacja władzy politycznej. Elementy teorii, Toruń 2000, p. 120.

[35] Ibidem.

[36] M. Bankowicz, Zamach stanu: studium teoretyczne, Kraków 2009, p. 69.

[37] Ibidem, p. 70.

[38] Z.J. Pietraś, Wojna domowa ze stanowiska prawa międzynarodowego, Lublin 1970, pp. 59 ff (PhD dissertation).

[39] 1 Kings 1,5-2,12, Pismo Święte Starego i Nowego Testamentu. Biblia Tysiąclecia, Warszawa-Poznań 1985, pp. 311-313.

nature or because there was no transformation of the class basis of the legal and political system of the state. Moreover, there were no legitimate grounds for *Solomon*'s seizure of power as he can hardly be considered to be a charismatic leader elected king by representatives of all the Israeli tribes. Thus, it seems that the way in which he became a co-regent was the result of *David*'s earlier political transformations of the Israeli state and a palace conspiracy.

The question arises what the consequences of this palace coup were for his opponents. As long as *Adonijah*, *David*'s eldest son who should be his legal heir, lived, there was always a possibility that he would declare himself a legitimate successor at any time. *Solomon* therefore seized the first opportunity to eliminate such a threat. *Adonijah* was executed as soon as he was suspected of conspiring against *Solomon*[40].

There are many examples of coups in Ancient Greece and Rome. The success of a coup d' état in ancient Athens depended not only on the strength, speed and determination of its participants but also on their political powerbase. It was natural therefore that they were forced to win over representatives of rival factions or political interest groups. Although the ideology of many upheavals focused around the ideological dispute – fundamental for Greek *poleis* – over the shape of a perfect political system, internal disputes in Athens went beyond the simple oligarchy-democracy bipolarity. An extremely important factor in many attacks was the role of individuals, for example, to mention just a few, *Peisistratos* (608 BC-510 BC), who pursued tyranny; democratic aristocrat *Cleisthenes* (565 BC -492 BC), who was forced to play a risky game; ambitious *Alcibiades* (450 BC -4040 BC) or moderate oligarch *Theramenes* (451 BC-404 BC)[41].

The Roman State during the Principate (27 BC – 284 BC) was a *de facto* monarchy and a *de iure* republic. It had no constitution or laws describing a legal way in to transfer power. There was only a certain custom in this area. In general, subsequent families were in power and they were dynasties *de facto* but not *de jure*. In the Senatorial milieu in Rome and in

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[40] 1 Kings 2,13-25.

[41] G. Malinowski, Zamach stanu i strach przed nim w demokratycznych Atenach, [in:] Zamach stanu w dawnych społecznościach, (ed.) A. Sołtysiak, Warszawa 2004, p. 46.

the Roman army, opposition to the ruler often took place. The opposition and possible counter-candidates of the "dynastic" ruler or his successor could only seize power by force[42].

Therefore, a coup d'état was during the Principate a kind of equivalent of today's presidential elections but without an official election campaign. The ruthlessness of the political struggle meant that the only effective way of eliminating opponents was to physically liquidate them. A coup either started with the assassination of the ruler or ended with his sudden death – or the rebel. Neither Roman law nor modern European law based on it provide for criminal penalties for a successful coup d'état. Only unsuccessful attempts are punished. A successful coup is *eo ipso* sanctioned, so it is not a crime. I will come back to this issue in the further part of the discussion.

The modern technique of a coup is not much different than in the past centuries. Although the progress of civilisation in terms of technology considerably affected the methods of carrying out coups, yet it is only an element of conspiracy which is the same as any other we encounter over the course of centuries as far as the methods of political upheavals are concerned. It should be noted that the more developed, in terms of civilisation, technology, bureaucracy, organisation, structure and society, a state is, the more difficult it is to organise an effective political upheaval. This is because the level of state organisation determines the possibility of a coup d'état, although even the most developed countries may become the target of a coup when the following factors exist: (a) a prolonged economic crisis, large-scale unemployment, rapidly rising inflation; (b) a long war and the defeat as well as a diplomatic conflict; (c) chronic instability resulting from a multi-party system[43].

It must, of course, be pointed out that the strategy itself of a coup is an extremely difficult task. Central authorities are protected not only by professional defence forces such as the army, police and secret services, but the authorities also have strong support from various political forces, often of high authority. These forces represent not only regional, ethnic,

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[42] A. Łukaszewicz, Rok 41 – Rzym i Aleksandria, [in:] Zamach stanu w dawnych społecznościach, (ed.) A. Sołtysiak, Warszawa 2004, p. 115.

[43] The social issue is further discussed by H. Arendt, op.cit., p. 69-141.

religious, financial but also labour interests – trade unions. The latter can be exceptionally effective as a tool of support or denial of the upheaval, using a method of resistance in the form of e. g. mass strikes[44].

A coup may often unite opposing organisations against the perpetrators, which obviously may have a decisive impact on the course of the coup. Let us not forget that coup d'état is an extremely dangerous undertaking, not only because the perpetrators are aware of the consequences if they make an unsuccessful attempt to demolish state structure by capturing buildings, arresting a large number of politicians, neutralising adverse army and police units and taking control of radio and television stations[45]. Basically, it is an activity whose organisation and coordination requires significant political influence and authority, especially among the uniformed services.

Certainly, among these services, the secret and security services – which actively uncover the opponents of the government and the state – are the greatest adversary of the coup d' état, as early as at the stage of the coup preparations. In the case of the Republic of Poland, these tasks fall within the competencies of the Internal Security Agency[46], the Foreign Intelligence Agency, the Military Counter-Intelligence Agency and the Military Intelligence Service[47]. The fundamental task of the Internal Security Agency is to protect the state against planned and organized actions that may pose a threat to the independence or constitutional order of Poland,

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[44] The mass strike as a form of proletarian action, was discussed, among others, by Rosa Luxemburg. She wrote that the mass strike is a lever that is being launched to initiate a social revolution. Speaking of the political mass strike -R. Luxembourg points out, one is thinking about a one-time impressive industrial proletariat strike, proclaimed for the most important political reasons, based on a timely agreement between party and trade union bodies. A mass strike is a volatile phenomenon that reflects all phases of the political and economic struggle, all stages and moments of political upheaval, eadem, Strajk masowy, partia i związki zawodowe, Hamburg 1906, https://www.marxists.org/polski/luksemburg/1906/strajk-masowy/index.htm (date of access 27.09.2017].

[45] The technique of carrying out a coup is discussed in detail E. Luttwak, Coup d'Etat: A Practical Handbook, London 1968, pp. 47-101.

[46] The Act of 24 May 2002 on the Internal Security Agency and the Foreign Intelligence Agency, Journal of Laws of 2016, item 1897.

[47] The Act of 9 June 2006 on the Military Counterintelligence Service and Military Intelligence Service Act of 9 June 2006, Journal of Laws of 2006 r., No. 104, item 709.

disrupt the functioning of state structures or jeopardize the fundamental interests of the country[48].

It is worth noting here that the involvement of military or paramilitary forces has been decisive for the success or failure of a coup d' état since ancient times. Of course, this is connected with the basic element of a coup, namely the use of force. In ancient Rome, in many cases, the participation of the Praetorian Guard in a coup d'état was of fundamental importance. It was often within this military formation that a plan of such coup originated. The main duty of the troops of the Praetorian Guard was to serve the ruler. The protection of the emperor and his family members was the main reason why Augustus (63 BC-14 BC) decided to organise the Praetorian Guard[49].

The Praetorians had to fight all kinds of conspiracies and coups that were directed against the ruler. Their task was also to maintain law and order in Rome and Italy. As I have already mentioned, the Praetorians themselves, from the 6th decade of the Common Era onwards, began to take part in coups[50]. By their behaviour they violated the fundamental principle of fidelity (*fides*), which was the essence of a military oath (*sacramentum*)[51]. Their actions had all their characteristic of the so called crime of violating the majesty (*crimen laesae maiestatis*)[52]. The Praetorians, because of their participation in coups, in the opinion of some historians, are a symbol of "brutish soldiers capable of everything, bold and rough, sometimes weak and unfaithful"[53].

I have not yet discussed where political upheavals, including coups, usually originate. Aristotle listed the most complete bases for carrying

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[48] Cf. the Act of 10 June 2016 on counter-terrorism activities, Journal of Laws of 2016, item 904.

[49] J.Wolski, Historia powszechna. Starożytność, Warszawa 1965, p. 328.

[50] See M. Cary, H.H. Scullard, Dzieje Rzymu, volume II, translated by J. Schwakopf, Warszawa 1992, pp. 81-82, 158, 296-297, 299, 320, 338.

[51] I. Łuć, Udział gwardii pretoriańskiej w zamachach stanu w 69 i 193 r. n.e., [in:] Zamach stanu w dawnych społecznościach, (ed.) A. Sołtysiak, Warszawa 2004, p. 134.

[52] Por. M. Dyjakowska, Subsydiarne stosowanie prawa rzymskiego w Polsce przed-rozbiorowej na przykładzie zbrodni obrazy majestatu, „Teka Komisji Prawniczej", Polska Akademia Nauk, Oddział w Lublinie, Lublin 2012, p. 61.

[53] I. Łuć, op.cit., p. 135.

them out. He mentions seven causes and origins of political upheavals but points out that there may be more. It happens that people rise against each other aiming at profit and honour not simply in order to get them for themselves, but because they see others, whether justly or unjustly, as privileged in this respect. Other causes are (3) arrogance, (4) fear, (5) superiority, (6) contempt, (7) disproportionate growth of certain elements. Also important, but in a different way, are electioneering, carelessness, gradual alteration and dissimilarity[54]. Among these causes, the effect of arrogance and desire for profit is quite obvious. If those in power chase profit and commit atrocities, rebellion starts both against themselves and against the regime, which allows them to do so, regardless of whether their lust reaches for private property or state property[55].

4. COUP D'ÉTAT AND POLISH CRIMINAL LAW

Let us now move on to Polish criminal legislation in order to analyse the existing legal norms relating to the crime of the "coup d' état". Pursuant to Article 127 § 1 of the Polish Criminal Code of 1997[56], anyone who, acting to deprive the Republic of Poland of its independence, to detach a portion of its territory, to use force to overthrow its constitutional system, or undertakes, in agreement with others, activities aiming at achieving this purpose, is liable to imprisonment for a minimum term of 10 years, imprisonment for 25 years or imprisonment for life Pursuant to § 2 of this Article anyone who makes preparations to commit the offence specified under § 1, is liable to imprisonment for a minimum term of three years. Let us try to refer here to the provisions of these articles, focusing in particular on the criteria of this act without analysing the criminal penalty attributed to it.

The crime referred to in Article 127 § 1, as it is defined by the Criminal Code, is the one that can be perpetrated by any offender, i.e. it may

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[54] Arystoteles, Polityka, translated by L. Piotrowicz, Warszawa 1964, p. 201.

[55] Ibidem, p. 202.

[56] The Act of 6 June 1997, Civil Code, Journal of Laws 1997, No. 88, item 553 as amended.

be committed both by a Polish citizen and by a foreigner. The specific features of this crime (coup d' état) are, within the legislator's understanding, the most important values, such as independence, territorial integrity, and a constitutionally defined political system. The concept of a constitutionally defined system seems to encompass here the legal system applicable in the territory of the Republic of Poland, established in the assigned procedure based on the standards created by bodies authorised to do so.

As far as the concept of the state's system is concerned, we can find an explanation of this term in the Constitution of the Republic of Poland of 1997, where, according to its Article 10, the system of the Republic of Poland is based on the division and balance of the legislative, executive and judicial powers. Legislative power is exercised by the Sejm and Senate, executive power by the President of the Republic of Poland and the Council of Ministers, and judicial power by courts and tribunals. Usually, however, as it is argued in the literature on the subject, the concept of state system means simply the overall organisation of the state and the methods of state authority's operation[57].

The regulation in Article 127 of the Criminal Code is further developed by the provisions of Article 128 § 1, § 2 and § 3. According to Article 128 § 1, anyone who, acting with the intention of using force to remove the constitutional authority of the Republic of Poland, undertakes activity aimed at achieving that purpose, is liable to imprisonment for a minimum term of three years. According to § 2 of this Article, anyone who makes preparations to commit the offence specified under § 1, is liable to imprisonment for between three months and five years. And according to§ 3 of Article127, anyone who, by force or by unlawful threat, affects the official activities of a constitutional authority of the Republic of Poland is liable to imprisonment for between one and 10 years. In the case of these provisions, we will focus exclusively on § 1 and § 2 of this article, as the provision of § 3 does not refer strictly to this analysis, as it only concerns the illegal influence on the activities of constitutional state bodies. The subject of protection seems to be all constitutional bodies. After all, granting protection only to the executive and legislative authorities would constitute a breach of the principle of the triple division of

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[57] B. Banaszak, Prawo konstytucyjne, Warszawa 1999, p. 12.

power, discriminating against the judiciary and thus upsetting the balance between the individual authorities. However, as we will see below, according to some representatives of the doctrine, the subject of protection does not cover some of the constitutional bodies.

The crime of the coup d' état referred to in Article 128 of the Criminal Code is not a matter of changing the constitutional system of the state, but rather of removing a constitutional body by force, without changing the system. Constitutional bodies are, of course specified in Constitution of the Republic of Poland of 1997[58]. It should be emphasized that the protection under Article 128 of the Criminal Code does not cover constitutional bodies other than those mentioned in Article 10 of the Constitution of the Republic of Poland, such as, for example, the Ombudsman, the Constitutional Tribunal and the Supreme Court, because, despite the fact that they are undoubtedly constitutional state bodies, they are not bodies of the Republic of Poland, however, as their tasks do not include representing the Republic of Poland[59].

When comparing Article 127 § 1 and Article 128 § 1, a question arises: which of these two provisions is related to a coup? It is widely accepted in the literature on criminal law that the crime coup d'état is referred to by the provisions of Article 127 § 1[60].

In contrast, the provisions of Article 128 § 1 are referred to as an "attack on a constitutional body of the state". Unfortunately, in the light of the terminology I adopted at the beginning, the distinction that exists in the material criminal law does not match the definitions adopted in the political sciences. Let us remember that the term "coup d' état" is used to describe a sudden change of the persons in power, an "exchange of elites".

Although a coup d' état understood as an upheaval may be linked to a change of the political system and may consist in the creation or abolition of some authority. However, this does not constitute a rule. It seems that the provisions of Article 127 § 1 should rather be related to the notion of a "revolution", adopted by at the beginning of our discussion.

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[58] The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws 1997, No. 78, item 473 as amended.

[59] J. Wojciechowski, Kodeks karny. Komentarz, Warszawa 1997, p. 225.

[60] For example A. Grześkowiak (ed.), Prawo karne, Warszawa 2011, p. 292.

After all, a "revolution" is generally defined as a change of power which entails a radical change of the political, social or economic system – a change of the system, therefore, and not a change of people in power. Unfortunately, however, there is no legal definition of a revolution. If we assume that Article 127 § 1 refers to a coup d' état, the question that arises immediately is what Article 128 § 1 refers to. As I have pointed, it mentions "an attack on a constitutional body of the state", but, after all, this provision may clearly refer to the definition of a coup d' état adopted above. The only way out of this linguistic impasse is to classify the provisions of Article 128 § 1 as a development of the provisions contained in Article 127 § 1, which means that such kind of procedure of unifying the notions we discuss in relation to these two crimes in the Polish Criminal Code will allow for their proper or at least correct definition and classification. In this way, the term "coup d' état" in the light of the Criminal Code will be understood both as a change in the constitutional system of the state and as a removal of a constitutional body of the state by force. This will be correct reasoning because, as I have already mentioned, it is often the case that after the removal of a constitutional state body by force, a change in the state's system takes place.

5. LEGALISATION OF A POLITICAL UPHEAVAL

Let us know again briefly discuss the "legalisation" of a coup. As I have mentioned before, Polish law does not contain criminal sanctions for a successful coup d' état. Only unsuccessful attempts are punished. A successful coup becomes *eo ipso* sanctioned, therefore it is not a crime. From the point of view of Polish criminal law, crimes against the state, which at present include the crime of coup d' état, have for centuries been an area of the penal activity of the state. These crimes originate in *crimen laesae maiestatis,* a concept which developed in the Roman Empire. The concept of crime against the ruler, known as *crimen laesae maiestatis*, is based on the law of the republican Rome, where it meant an act directed against the authorities of the Roman people.

In the event of a successful coup d' état, the legal system is often subsequently changed by a new power holder, and crimes committed before this change are not punishable in the new or changed legal system. It is

hard to imagine a situation in which a person or a group of people who head a new government (a constitutional body) would impose a sanction on themselves, or rather with the help of judicial bodies, as a result of their own unconstitutional acts[61]. It is worth to remember, therefore, that penalising behaviours such as attempts of political upheavals, e. g. a coup aims primarily at deterring potential perpetrators. That is because the accomplishment, if it is effective and accomplished the goal intended by the perpetrators, for obvious reasons will not in fact be subject to a criminal sanction under any circumstances. How did the attempts to legalise a coup d' état look like in the past, and how do they look like today? In ancient times, a coup rarely took place on the basis of existing institutions, as *Ephialtes* from Athens (approximately 500 BC-461 BC), or oligarchs in 411 did. However, the perpetrators tried to obtain a sanction justifying their actions, such as *Peisistratos*, who staged the epiphany of the goddess Athena[62]. A woman named *Fye* , who was almost 1.80 m tall and exceptionally beautiful, was characterized as the goddess and brought to the city in a cart[63]. The heralds in front of her called upon the Athenians to recognize *Peisistratos*, whom Athea herself leads back to Acropolis. The Athenians, seized by pious fear, agreed to it. *Herodotus* was astonished at the gullibility of the Athenians, which does not change the fact that religious sanction, or at least its appearance, was necessary to carry out a bloodless coup d' état equivalent to the demonstration of force[64]. Religious sanctions were also applied in Biblical times. The institution of divine legitimacy of power acquired in a manner other than succession within a dynasty is proved to have existed in the ancient Middle East. It was often the intervention of prophets and was mainly expressed in the legitimacy of usurpers' reign by designating them as rulers, including through anointment, for example in the case of King Solomon's biblical coup, already mentioned above[65].

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[61] M. Konarski, Zamach stanu jako forma kwestionowania legitymacji prawa, „Studia Prawnicze i Administracyjne" 2015, no. 3, pp. 21-22.

[62] Arystoteles, Ustrój polityczny Aten, translated by L. Piotrowicz, XIV, Warszawa 1973, p. 23.

[63] N.G.L. Hammond, Dzieje Grecji, translated by A. Świderkówna, Warszawa 1994, p. 212.

[64] G. Malinowski, op.cit, p. 35.

[65] 1 Kings 1,1-2,46.

At present, the legitimacy of a coup d' état is primarily reflected in public international law in its relation to national law. In cases of unconstitutional changes of the government, such as for example a coup d' état, there are two principles under international law: the principle of effectiveness and the principle of legitimacy. The principle of effectiveness states when a government which exercises power in a state in a real (effective) way may be recognised. The principle of legitimacy means that the recognition of a government that has come to power in a non-constitutional manner becomes effective only when it receives legitimacy from the bodies legally functioning in the state (an act of the parliament, a court ruling, etc.).

The legitimacy may also be based on the assertion that it was established in accordance with the will of the people, historical justice, the will of providence, the need to introduce order in a state threatened with anarchy, or the violation of national interests. The legitimacy of the power that has been seized by a coup d' état may also be judged by social credibility, the measure of which is the degree of acceptability of government decisions, i. e. recognising them as duties by citizens. Finally, legitimisation may finally consist in universal elections, and obviously the unfavourable outcome of such an election for a group that has seized power by means of a coup d' état is likely to invalidate such elections.

6. CONCLUSIONS

In a democratic state of law constitutional bodies are certainly the basis for the smooth functioning of the state. Their mutual position and relationship resulting from the constitutional principle of separation of powers means that the proper functioning of a state is only possible if all its bodies are duly appointed and can fulfil the functions assigned to them by the law. Disrupting the lawful operation of these bodies may lead to a malfunctioning of the state and, consequently, to a failure to fulfil its basic constitutional tasks. Such a breach of the stability of constitutional bodies and proper functioning of the state may result in a breach of fundamental citizens' interests. The proper functioning of the state must therefore be seen as an important social value. Therefore, it should be concluded that apart from the protection of constitutional bodies themselves, legal

regulations penalising the crime of the coup d' état protect the interests of the society connected with the proper functioning of the constitutional bodies of the Republic of Poland.

It should be noted that, although a political coup of the nature of a coup d' état often affects a subsequent change in the legal system resulting from the taking over of roles in a centre of state power, and thus often there may be an immediate threat to the individual's sense of legal security[66].

The phrase "a sense of danger" is used on purpose here because it is not, as history shows, a general rule that the result of a political upheaval, e. g. a coup d' état, is nationwide legal instability. Moreover, it sometimes happens that the consequences of the political upheaval do not relate to the principle of acquired rights and other general principles of law recognised by civilised nations, but they are only visible at the level of personal reshuffle in the main state institutions. Of course, "perpetrators" can and often do continue to carry out their own reforms of a universal character for a given legal system adopted in a given political situation, which may worsen the legal situation of individual classes of society, leading to even the atrophy of the law[67].

Let us remember, however, that these reforms can also have a positive effect, i.e. improve the position of an individual in the state, as opposed to his or her position before the coup. This means, nothing more, nothing less, that this legal security is multidimensional and definitely multi-class in nature, since the awareness of legal security is interpreted differently by different classes of society[68].

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[66] However, our attention should be paid to crisis legislation and, above all, to the institution of a state of emergency, which is usually implemented e. g. at the time of a coup d' état is carried out. Most countries have such legal regulations applied in situations of threat to the constitutional state system, security of citizens or public order. An immediate threat to the legal security of an individual/citizens through restrictions on freedom and human and civil rights is found in the Polish legislation in Articles 16-21 of the Act of 21 June 2002 on the State of Emergency. Uniform text: Journal of Laws of 2017, item 1928.

[67] A. Kojder, Atrofia prawa, [in:] Abiit, non obiit. Księga poświęcona pamięci księdza profesora Antoniego Kościa SVD, Lublin 2013, pp. 169-189.

[68] Cf. K. Marks, F. Engels, Manifest komunistyczny: burżuazja i proletariat, [in:] K. Marks, F. Engels, Dzieła wybrane, vol. I, Warszawa 1949, pp. 26-37; K. Marks, Osiemnasty brumaire'a Ludwika Bonapartego, [in:] K. Marks, F. Engels, Dzieła wybrane, vol. I, Warszawa 1949, pp. 307-317.

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