

# **Emergency Governance in Czech Constitutional Context**

## **Abstract**

This dissertation thesis focuses on emergency governance from the perspective of the constitutional theory, using the legal-positivist theory of normative institutionalism, the Planning Theory of Law and the findings of Czech (Czechoslovak) legal academia and practice.

The first part of the thesis focuses on addressing the question: what makes emergency governance emergency? First, it introduces governance as an action that determines the conduct of a universal public institution – the state. This governance, like any action, is governed by descriptive and practical information that creates a certain picture of the world, a certain situation. To characterize emergency governance, the thesis imports the key role of a specific image of the world – an emergency situation, the suppression of which is the meaning and purpose of emergency governance.

The thesis then characterizes an emergency situation as a present, urgent and unusually intense threat capable of causing harm to the referent object. Next, the thesis analyses issues related to the notion of emergency, such as the question of the type of reference object, the presumed short-term character and unpredictability of emergency situations, as well as the relation of the emergency situation to the precautionary principle. After analysing the existing classifications of emergency situations, the thesis also proposes a new classification with regard to the criterion of the intensity of the security threat and its duration. After this analysis of the phenomenon of emergency, the thesis tries to justify the very existence of emergency governance and to explain the problem of the permanence of emergency governance.

The second part of the thesis addresses the relationship of emergency governance to law. Here it focuses on addressing the following research questions: does emergency governance take place conceptually, and therefore necessarily, outside the law? If not, then should emergency governance take place extra-legally? The thesis here analyses existing views on the extra-legal nature of emergency governance, concluding that it is necessary to examine differently essential (due to the very nature of emergency governance) and preferential (due to the claimed advantage for emergency governance) extra-legality (extra-lawfulness) on the one hand, and simple (emergency governance is located in a space of complete absence of norms, outside the legal order) and qualified (emergency governance has no support in a legal or constitutional text) extra-legality (extra-lawfulness) on the other.

After a critique of the theories arguing for essentialist simple extra-legality as well as preferential extra-legality of emergency governance, the thesis concludes that it is not only

possible to evaluate emergency governance in terms of its compliance with the legal order, but also that it is advantageous to regulate this governance in the form of written legal rules. However, this explicit and specific (constitutional) legal regulation may not always be necessary for the lawfulness of emergency governance; emergency governance may be possible in certain circumstances even without specific support in the text of ordinary statutes as well as constitutional statutes. In the latter case, one can speak of a state of constitutional necessity, and the thesis analyses this phenomenon in detail.

The third part of the thesis deals with specific models of emergency governance. It therefore focuses on addressing the research questions: what are the ways in which emergency governance can be exercised, and which of the modes of emergency governance can be considered more appropriate? This section first summarises and analyses existing classifications of different models of emergency governance, and then the thesis proposes its own classification of models based on the role of time and the nature of the normative-institutional regime. Finally, the paper concludes with specific suggestions for appropriate normative-institutional settings for emergency governance in constitutional republics.

**Keywords: emergency governance, states of emergency, constitutional theory**