

The Normative Basis for Coordination of Local Action for Safety

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1. Basic Systemic Issues

The provision of safety at a local level falls under the jurisdiction of entities acting in the field of public administration. This includes both the government and local self-government administration. For this reason it is important to begin any analysis by delineating the operations of local self-government units.

According to the Polish Constitution¹, the local self-government participates in exercising public authority by acting in its own name and assuming responsibility for the statutory tasks assigned to it (article 16, paragraph 2 of the Constitution). Although tasks assigned to the local self-government are described in various statutory acts, the Constitution points to two important presumptions. Firstly, the Constitution prescribes that the local self-government may execute only those public tasks that are not statutory stipulated for execution by other public authorities (article 163 of the Constitution). Secondly, any local self-government tasks that are not stipulated for execution by other units of the local self-government fall in the scope of the commune – the smallest unit, being the closest to the members of the public (article 164, paragraph 3 of the Constitution).

The commune is a basic unit of the local self-government, enjoying a special Constitutional protection. The operations of other units are regulated by statutory acts. The three-party territorial division of the country was introduced in 1998 as a result of the government effecting ‘the great work of fixing the country and finalising the reforms initiated in 1989’ and executing the Constitutional principle of decentralisation of the local public authority. From this moment on counties commenced operations at the local level, while the voivodeship self-governments operate at the regional level. Although – in terms of the territory – the area of a county incorporates communes, and voivodeships incorporate counties, these units are not hierarchically bound together. They act independently from one another, in their own name, and accepting full responsibility for their actions. To simplify, local self-government tasks of a supra-communal nature are assigned to the county, and the scope of the voivodeship self-government tasks does not encroach on the independence of neither county nor commune.

The systemic position of local self-government units requires a separate commentary. The regulatory bodies are collegial in nature at every level of the local self-government. Executive bodies show more diversity in this matter. At the commune level the executive body (village mayor, mayor, and city president) is autocratic in nature and is elected directly by the members of the public. In all other cases (in self-governed

¹ <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

counties and voivodeships) the executive body is collegial in nature (county government and voivodeship council respectively) and is headed by a chairman (the starost and the voivodeship marshal respectively).

Cities with county rights form a specific category of the local self-government. According to article 91 of the County Self-Government Act county rights are vested in cities which population on the 31st of December 1998 was greater than 100.000, as well as in cities which on this date ceased to serve as the voivods' offices, and ones that were given county rights when the first administrative division of the country occurred in 1998. These are a special kind of communes, which – primarily due to a large population – were given tasks and competencies normally granted to counties.

The administration dualism of the government and self-government plays an important part in a reflexion on the coordination of actions taken. We encounter the full extent of this dualism at the voivodeship level. Here, apart from the voivodeship self-government executing its statutory tasks in its own name, we also encounter other entities executing public administration tasks (more specifically, the scope of the government administration). The voivod holds a special position here, being both the government's representative (of the Cabinet) for the voivodeship, and a supervising body of the joint government administration.

The administration dualism is also present, to an extent, at the county level. In such instances, the starost is the supervisor of the county services, inspections, and guards. Unfortunately, establishing the entity responsible for safety in the county is problematic. On the one hand, one of the county's tasks is, to provide public order and safety. On the other hand, it is the county's task to ensure that the heads of county services, inspections and guards execute their statutory tasks and competencies - tasks which, as delineated by appropriate legislation, are concerned with the provision of safety.

This results in the starost being responsible not only for safety of the county *in genere*, but also for the effectiveness of task execution of the heads of county services, inspections and guards. However, a close examination of the legislation currently in force may yield some doubts as to the extent of this responsibility. Under the current legislation the heads of services, inspections and guards included in the joint county administration are:

- The county Police commissioner,
- The county Fire Department commissioner,
- The county construction supervisor,
- The county national sanitary inspector.

2. The basic institutionalised forms of coordination of action for safety in the county.

Starost's supervision of the county services, inspections and guards has a special character. The starost is a public administration body tied to the county – as such he/she is a unit of the local self-government. For this reason, the scope of this supervision has been substantially limited (as compared to the voivod's supervision of the joint government administration of the voivodeship) by the legislator. This limitation is most visible in:

- Statutorily established influence on assigning managerial positions in these units,
- Ratifying of their action programmes,
- Agreeing a common action of these units in the county,
- Assigning the execution of an audit, when justified.

Establishing the particular level of influence of the starost on the functioning of the county services, inspections and guards which fall under the joint county administration causes double subordination of their managers. On the one hand, they are subordinated to the starost (to a certain degree). On the other hand, in terms of the line of duty, they are still subordinated to their direct superiors in the government administration structure.

This setup makes establishing adequate mechanisms for coordination of actions taken by various entities necessary. The improved elasticity of execution of public safety tasks with the use of means most appropriate to particular situations is clearly the result of conferring a number of such tasks to counties. The legislator deemed this solution optimal, provided the decentralisation of county services, inspections and guards is accompanied by their adequate cooperation. It should be noted that uncoordinated operations of national services, inspections and guards working in the county may lead to unnecessary overlapping of actions or lack of action when one ought to be taken. Therefore, mechanisms allowing for coordination of actions of various entities responsible for safety in the county should be considered a cornerstone of task execution effectiveness.

The mandatory setting up of safety and order commissions working with and under the starost is an example of an institutionalised form of coordination. It is the intention of the legislator that these commissions aid the starost in execution of safety and order tasks resulting from the starost's supervisory role over the county services, inspections and guards.

According to article 38a, paragraph 2 of the County Self-Government Act, a commission is responsible for:

- 1) assessment of threats to public order and safety in the county;

- 2) giving opinions on the work of the Police as well as other services, inspections and guards, and organisational units performing public order and safety related tasks in the county;
- 3) preparation of the project of the county crime prevention and public order and safety programme;
- 4) giving opinions on other projects of programmes of cooperation of the Police, other county services, inspections and guards, and organisational units performing public order and safety related tasks in the county;
- 5) giving opinions on the county budget project – as set out in point 1;
- 6) giving opinions on local legislation projects and other documents relating to the execution of tasks delineated in points 1, 2, and 4;
- 7) giving opinions on other issues regarding public order and safety, as commissioned by the starost.

Due to the relative independence of the coordinated entities belonging to different organisational sections, the coordinating role of the commission is non-authoritarian in nature. The means at the disposal of the coordinating entity are informative, consultative and reporting in nature. Their use aims at providing a proper flow of information, which in turn leads to a more effective elimination of divergence between actions taken by different entities. Therefore, although commissions are limited to acting almost exclusively in an advisory capacity, a proper composition of a commission may greatly improve the flow of information, as well as planning the tasks to be undertaken, specifically the long-term ones.

Among the mandatory members of the safety and order commission are:

- starost (who *ex lege* chairs the commission),
- two representatives of the county regulatory body,
- two representatives of the county Police Commandant (in reality this usually means that the Commandant is personally a member),
- and three persons appointed by the starost, who are respected in their community and who display superior knowledge of the issues relevant to the commission and its tasks.

The Act allows for a discretionary broadening of commission composition, which alleviates, to an extent, the underprovisions resulting from its narrow legislative delineation. The preparation of a project of the county crime prevention and public order and safety programme that is subsequently adopted by the county regulatory body is an important task of the commission. It also prominently displays its planning and inspirational role. It should be noted that other entities consolidated under the starost also participate in the execution of this programme. The statutorily provided possibility allowing for making the programme more elastic and adjustable for the real needs of all involved parties already at the planning stage seems invaluable. The

participation of several entities in establishing the priority tasks to be set out in the programme undoubtedly fosters a more effective way of executing the assumed tasks.

The starost provides local safety by executing other tasks as well. He/she is the body responsible for crisis management in the county. The Crisis Management Act imposes on the starost, among others, the following duties: monitoring management, planning, responding to and removing of the results of hazards in the county. These tasks are performed by the joint county administration. Additionally, county crisis management teams are called together to assist the starost in execution of crisis management tasks. These teams, as well as county crisis management centres constitute an additional institutionalised form of transferring information regarding safety in the county. However, in these cases the flow of information has a different source than in commissions, whose members are usually supervisors of county services, inspections and guards. What is more, the method of operation of these bodies allows for a more rapid response in crisis situations. This is particularly important for county crisis management centres.

In the event of a natural disaster – defined by the Polish law as natural calamity or technical malfunction, the results of which pose a large-scale threat to the lives and health of people, the property or the environment – the starost has additional competencies. The power to introduce a state of emergency lies with the government. Provided that a state of emergency is introduced in more than one commune in the county, and is limited to that county, the starost has a statutory responsibility for directing efforts aimed at prevention or removal of the effects of a natural disaster. The use of the phrase ‘directing efforts’ allows for an assertion that the competencies of the starost, including ones relating to the joint services, inspections and guards under his supervision are greatly increased. In terms of the scope of actions taken in the county, the starost is authorised to issue mandatory orders to, among others, the supervisors of the county services, inspections and guards. This substantial amendment to the division of tasks and authority focuses the responsibility for safety in a given area in the hands of one autocratic body of the public authority. It is justified by the need for decisive and coordinated reaction to particular kinds of threats.