

Maciej Serowaniec*

Piotr Rączka**

Tasks of the municipalities in the field of defence

Abstract

As a state directly neighbouring the arena of armed action, Poland was challenged to prepare legal solutions appropriate to the existing threats in the wake of Russia's armed aggression against sovereign Ukraine. The adoption of the Act of 11 March 2022 on Defence of the Homeland coincided with the armed conflict beyond the eastern border of our country. These circumstances inspired the authors to analyse systemic solutions involving the municipality in the procedures for minimising the impact of security threats related to a potential armed conflict. The paper aims to characterise the tasks of the commune, which is the basic unit of local government in Poland, to ensure national defence.

Key words: Act on Defence of the Homeland, municipality, defence, security, municipalit's tasks, municipality's delegated tasks, municipality's executive body

* Assoc. Prof. Maciej Serowaniec, PhD, Department of Constitutional Law, Nicolaus Copernicus University in Toruń, e-mail: mserowaniec@umk.pl, ORCID: 0000-0003-4693-7977.

** Assoc. Prof. Piotr Rączka, PhD, Department of Administrative Law, Nicolas Copernicus University in Toruń, e-mail: raczka@umk.pl, ORCID: 0000-0002-1097-5712.

Introduction

The armed aggression of Russia against sovereign Ukraine caused Poland, as a state directly neighbouring the arena of armed action, to face the challenge of preparing legal solutions adequate to the existing threats. The armed conflict beyond the eastern border of our country, coincided with the enactment of the Act of 11 March 2022 on the defence of the Homeland¹, which entered into force on 23 April 2022. This regulation replaced, among other things, the Act of 21 November 1967 on Universal Obligation to Defend the Republic of Poland², which was the key legal act regulating the obligations of the state and other public entities with regard to the implementation of tasks related to the defence of the Republic of Poland³. These events inspired the Authors to analyse systemic solutions involving the municipality in minimising the effects of security threats related to a potential armed conflict.

This study aims to answer the question of the role that the municipality, which is the basic unit of local government in Poland, has to play in the face of countering threats to the state's external security.

Municipality as the basic unit of local government in Poland

In the light of the provisions of the Constitution of the Republic of Poland of 2 April 1997⁴, the basic unit of local self-government is the municipality (Art. 164, para. 1). As underlined by the Constitutional Tribunal in the judgment of 7 December 2005, Kp 3/05, "in the conditions of functioning of a multi-level structure of local government, the Constitution attributes to the communities of the lowest level a basic character [...]. The municipality is the community of inhabitants closest to them. The legislator may not strictly establish territorial self-government units, including inhabitants of smaller areas"⁵. Under Art. 164(3) of the Constitution, the municipality performs all the tasks of local self-government not reserved for other units of local self-government. Thus, the

1 Journal of Laws 2022, item 655 – hereafter referred to as the Homeland Defence Act.

2 Consolidated text, Journal of Laws 2021, item 1728.

3 Cf. more extensively Z. Witkowski, M. Szewczyk, M. Serowaniec, *Model cywilnej i demokratycznej kontroli egzekutywy nad siłami zbrojnymi Rzeczypospolitej Polskiej*, Toruń 2018.

4 Journal of Laws 1997, no. 78, item 483, as amended.

5 Judgment of the Constitutional Court of 7 December 2005, Kp 3/05, „Orzecznictwo Trybunału Konstytucyjnego. Zbiór Urzędowy” 2005, no. 11A, item 131.

system legislator established a general presumption of competence in favour of the municipality with regard to the division of tasks between individual local government units. Under Art. 165(1) of the Basic Law, local government units have legal personality. Adopting this legal construction is the starting point for granting autonomy to local government units. Thanks to granting legal personality, local government units are both subject to rights and have legal capacity.

Consequently, they can have the right of ownership and exercise other property rights⁶. The principle of self-government units' independence applies to all aspects of their activities, including financial independence. The latter's essence is to provide local self-government units with revenues allowing public tasks assigned to these units⁷. Pursuant to Art. 167 of the Basic Law, this share is adequate to the tasks assigned to local government units. Revenues of local government units are divided into three groups: own revenues, general subventions and targeted subsidies from the state budget. The source of the latter two is the state budget, with the difference, however, that general subventions are granted to local government units to supplement their own revenues. In contrast, earmarked subsidies are granted to perform specific tasks. In accordance with the well-established view of the Constitutional Tribunal, Art. 167 of the Constitution ensuring local government units a share in public revenues is one of the cardinal guarantees of the independence of these units⁸. In view of the provisions of Art. 168 of the Constitution, local government units also have the right to determine the amount of local taxes and charges, which constitute one of the sources of their revenues. At the same time, their amount may be determined only within the statutorily defined limits⁹. The independence of action of local self-government units, in the light of Art. 165(2) of the Constitution, is subject to judicial protection. As emphasised by the Constitutional Tribunal in the judgement of 29 October

6 Judgment of the Constitutional Court of 26 January 2010, K 9/08, *ibidem* 2010, no. 1A, item 4.

7 Judgment of the Constitutional Court of 24 March 1998, K 40/97, *ibidem* 1998, no. 2, item 12.

8 M. Serowaniec, *Samorząd terytorialny* [in:] *Prawo konstytucyjne*, eds. Z. Witkowski, A. Bień-Kacała, Toruń 2015, p. 553–556.

9 Judgment of the Constitutional Court of 9 June 2010, K29/07, „Orzecznictwo Trybunału Konstytucyjnego. Zbiór Urzędowy” 2010, no. 5A, item 49.

2009, K 32/08¹⁰ requires its complexity to be considered at two levels. The first relates to the judicial protection in civil relations enjoyed by all entities with legal personality. On the other hand, the second relates to judicial protection against unlawful interference in the independence of local self-government units by government administration bodies (contestability of supervisory measures, settlement of competence disputes) and other local self-government units (competence disputes)¹¹.

Nature of the municipality's tasks in the field of defence of the Republic of Poland

Concerning the performance of tasks related to the broadly understood defence of the Republic of Poland, the basic regulation specifying the authorities competent in matters of state defence, as well as the entities participating in the performance of public tasks related to the defence mentioned above, is currently the Act of 11 March 2022 on the defence of the Homeland. In doing so, it is worth noting in particular that, among the entities performing state defence tasks, the legislator mentions, in addition to all authorities and government administration, other state bodies and institutions, entrepreneurs, non-governmental organisations and other entities, as well as every citizen, also local self-government bodies. Thus, the legislator assumes the cooperation in this area of local self-government units, whose activity is concretised through the activity of local self-government bodies, primarily with the government administration. However, the analysis of the statutory regulation leads to the conclusion that in the light of the provisions of the analysed statutory regulation, local self-government units, including municipalities, are treated primarily as entities supporting the government administration in taking measures to ensure the state's defence¹².

Defining the municipality's role in implementing state defence tasks requires a detailed analysis of the legal solutions contained in the Act.

¹⁰ Judgment of the Constitutional Court of 29 October 2009, K 32/08, *ibidem* 2009, no. 9A, item 139.

¹¹ For a broader discussion of the municipalities system: Z. Bukowski, T. Jędrzejewski, P. Rączka, *Ustrój samorządu terytorialnego*, Toruń 2011.

¹² More extensively: M. Serowaniec, P. Rączka, *Samorząd terytorialny i jego rola w ustawie z dnia 11 marca 2022 r. o obronie Ojczyzny*, „Journal of Modern Science” 2023, vol. 50, no. 1.

Tasks of the municipality concerning registration and military qualification

The legislator delegates several tasks and competences regulated by the Homeland Defence Act to municipal bodies for implementation in the area of registration and qualification activities, which are conducted for the needs of state defence. The analysis of the statutory regulation leads to the conclusion that the organs of local self-government units obtain competences in this respect to undertake activities in the area of military registration and military qualification¹³.

Under the provisions of the Act, registration and qualification activities are to be used primarily to create a military record constituting a database on: persons subject to registration, military qualification, compulsory military service and persons volunteering for military service, as well as those subject to or fulfilling other types of defence duty; soldiers in active military service and persons in reserve; and employees of the Ministry of National Defence. Under the provisions of the Act under review, the tasks of military registration have been entrusted to the executive bodies of municipalities. In principle, military registration is carried out by the head of the municipality (mayor, city president) competent for the place of permanent residence or temporary residence lasting longer than 3 months of the person subject to registration on the day he/she attains the age of 18 (Art. 53 of the Act on the defence of the Homeland). At this point, the legislator has equipped these bodies with competences enabling them to perform registration tasks effectively. Under the provisions of the Act, the municipal executive bodies are entitled to summon a person subject to such an obligation to register¹⁴. At the same time, they are entitled to impose a coercive fine on a person who, in breach of his/her obligation without a justified reason, fails to report for registration, or to order that the police forcibly bring the person to a municipal office. In the indicated cases, the provisions of the Act of 17 June 1966 on enforcement proceedings in administration¹⁵ are directly applicable.

13 P. Ruczkowski, *Świadczenia obywatela na rzecz obrony w świetle standardów demokratycznego państwa prawa*, „Annales Universitatis Mariae Curie-Skłodowska” Sectio G (Ius) 2022, no. 2, p. 75–92.

14 D. Nowak, *Pełnienie służby w ramach powszechnego obowiązku obrony* [in:] *Prawo wojskowe*, eds. W. Kitler, D. Nowak, M. Stepnowska, Warszawa 2017, p. 338–339.

15 *Journal of Laws* 2022, item 479.

Military qualification is an important stage conditioning the creation of a military record reflecting the actual state of human potential. The primary objective of the qualification is to enter data into the military records and to determine the ability of citizens of the Republic of Poland to perform military service. In addition to other entities, activities within the framework of this qualification are also undertaken by the head of the village (mayor, town president). As an aside to these considerations, however, it is worth noting that in accordance with the Act on Homeland Defence provisions, the body responsible for conducting military qualification in a poviast (city with poviast rights) is the poviast starost (city president). Also in the case of military qualification, the head of the poviast (mayor, city president) was given the authority to summon a person to appear for qualification. In the case of unjustified failure to fulfil this obligation without a justifiable reason, either *ex officio* or at the request of the chairman of the poviast medical commission or the head of the military recruitment centre, the authority to impose a fine on the person subject to military qualification for coercion or to order that the person be forcibly brought to military qualification by the Police. Similarly, the provisions on enforcement proceedings in administration also apply to these measures. It is also worth noting that in the period in which mobilisation has been declared, as well as in times of war, the competences of the head of the mayor (mayor, town president) and the head of the district governor (starost) to conduct military qualification are vested in the head of the military recruitment centre (Art. 539 para. 6 of the Act on Homeland Defence)¹⁶.

Tasks and competences of the municipality concerning personal services in peacetime

According to the provisions of the Act on the defence of the Homeland, personal services consisting in the performance of various types of *ad hoc* work to prepare the defence of the state or combat natural disasters, liquidating their effects and crisis management may be imposed on persons of Polish citizenship who are over 16 and under 60 years of age. This obligation may also include the obligation to use the simple tools at one's disposal, and concerning persons

¹⁶ J. Bulira, *Komentarz do art. 539 [in:] Obrona Ojczyzny. Komentarz*, ed. H. Królikowski, Warszawa 2023.

performing services consisting in the delivery of documents of appointment to military service and calls for service (so-called couriers), also the means of transport at one's disposal. Obligations of this type may be imposed in connection with military exercises and for the delivery and handling of benefit items in kind. The competent authority both in terms of issuing a decision to impose an obligation to perform a personal benefit and in terms of issuing a decision to assign a person to perform a personal benefit is the mayor (mayor, city president). In both cases, decisions imposing the obligations mentioned above resulting from the statutory regulation are issued at the request of the head of the military recruitment centre, the head of the unit intended for militarisation or the head of the organisational unit performing tasks for the needs of state defence¹⁷.

The municipality's executive body also disposes of enforcement powers regarding the decision to impose the obligation to perform the personal service. Under the provisions of Art. 620(6) of the Homeland Defence Act, in the case of failure to appear of a person obliged to perform a personal service without a justifiable reason, the head of the municipality (mayor, city president) orders that this person be forcibly brought by the Police to a designated military unit or entity, under the procedure provided for in the Act on Enforcement Proceedings in Administration. At the same time, the legislator stipulated that such decisions are given the order of immediate enforceability [Art. 620(4) of the Homeland Defence Act]. Similarly, this body's enforcement powers are also shaped regarding the decision to assign a person to perform personal services. This enforcement mode may be applied by the municipal authority in the case of the latter decisions concerning the persons who are the addressees of the decision, only after the issued decisions have acquired the value of finality¹⁸.

Tasks and competences of the municipality concerning peacetime benefits in kind

The Act on defence of the homeland also regulates the principles of imposing an obligation to perform benefits in kind. According to the provisions of the analysed act, in-kind benefits, consisting in the handing over for use of owned

17 M. Serowaniec, P. Rączka, op. cit.

18 J. Bulira, *Komentarz do art. 620 [in:] Obrona Ojczyzny...*

real property and movable assets to prepare for state defence or combat natural disasters, liquidating their effects and crisis management, may be imposed on state offices and institutions, entrepreneurs and other organisational units, as well as natural persons (Art. 628 of the Homeland Defence Act). Such services may be performed for the benefit of the Armed Forces, units intended for militarisation and organisational units performing tasks for state defence or combating natural disasters, liquidating their effects and crisis management, including local self-government bodies¹⁹.

It should be emphasised that the systemic and procedural constructions applied by the legislator in the area of benefits in kind are analogous to the previously described ones regulating the principles of imposing the obligation to provide personal benefits. Again, the body competent to impose the obligation to provide benefits in kind is the executive body of the municipality, i.e. the head of the municipality (mayor, city president). It is his/her competence to issue administrative decisions on the allocation of real or movable property for benefits in kind, including those planned to be performed in the event of an announcement of mobilisation and wartime. However, if the issuance of a decision in this respect is related to the allocation of real or movable property for benefits in connection with their use during a military qualification, the cooperation of public administration bodies is necessary in this case.

As a rule, the addressees execute decisions creating obligations to provide benefits in kind at the request of the competent public administration body. The legislator has delegated the competence to take such actions to the head of the local authority (mayor, city president). However, the specific nature of the benefits in kind justified the introduction of a regulation into the Act according to which, the head of the municipality (mayor, city president) may, in a decision, oblige the holder of real or movable property to perform such benefits without a separate summons (Art. 630(5) of the Homeland Defence Act). However, the performance of such services to which the possessor of the thing has been obliged by the decision requires a separate summons by the municipal executive for its performance. The provisions of the Act require that the head of the municipality (mayor, city president) serves such a summons 14 days prior to the date of performance of the service, except in cases where performance of the service takes place in order to check the mobilisation readiness of the Armed Forces. It is worth noting that the summons to perform

19 Eadem, *Komentarz do art. 628 [in:] Obrona Ojczyzny...*

a benefit in kind is not subject to appeal and the summons itself is immediately enforceable on the date specified therein.

Therefore, the adopted structure for implementing benefits in kind requires that the mayor (mayor, city president) has up-to-date information on the entities entitled to dispose of certain things. For this reason, the legislator imposes an obligation on the holders of real estate and movable property concerning which a final decision has been issued on the allocation of such real estate and movable property for benefits in kind, to inform the mayor (mayor, city president) of the disposition of such real estate or movable property, within 30 days from the date of such disposition. According to the adopted statutory solutions, government administration bodies, local government bodies and entrepreneurs are also obliged, at the request of the heads of military recruitment centres, to provide information, according to their records and registers, on the status of real estate and movable property that may be subject to benefits in kind.

Tasks and competences of the municipality concerning services in the event of mobilisation and war

In the event of the declaration of mobilisation and wartime, the legal regulation shaping the role of local self-government in the defence of the Republic of Poland is of a special nature concerning the previously discussed legal constructions²⁰. This is because the legislator aims, in these circumstances, to deform the actions undertaken by the competent authorities and, additionally, creates the possibility to appoint persons subject to the obligation of personal services to perform ad hoc works. In the light of the provisions of Art. 637 of the Act on Homeland Defence, such persons may be called upon at any time in the event of an announcement of mobilisation and in time of war to perform various types of ad hoc work for the benefit of the Armed Forces or organisational units performing tasks for the needs of national defence. In contrast, the performance duration of this type of service may not exceed 7 days at a time. It is also worth noting the legal regulation which makes it possible to make the addressee of the obligation to provide benefits in kind in

20 P. Tuleja, *Komentarz do art. 26 [w:] Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. P. Tuleja, Warszawa 2021.

this particular period also local self-government bodies. Subjectively, however, the legislator has limited these benefits to the handing over of owned real estate and movables for use by the Armed Forces or organisational units performing tasks for the needs of state defence.

The procedural solutions are also aimed at significantly deforming the procedures accompanying the imposition of obligations in this respect. The legislator similarly creates the body competent for imposing the obligation of personal and material benefits in the event of announced mobilisation and wartime. In the cases as mentioned above, decisions in the form of administrative decisions are issued by the head of the municipality (mayor, city president). It is also worth noting that such decisions may be issued only based on ad hoc applications submitted by the bodies and heads of organisational units referred to directly in Art. 620 para. 1, i.e. the head of a military recruitment centre, the head of a unit intended for militarisation or the head of an organisational unit performing tasks for national defence needs, as well as commanders of military units. According to the adopted statutory solutions, in specific situations the municipal executive bodies may also impose the obligation to provide personal or in-kind services by way of announcements or in another manner. Such a regulation is particularly important in view of allowing the procedure of imposing the obligation to provide benefits to be significantly deformed in special periods when the proper functioning of offices and other institutions, including those ensuring the possibility of effective delivery of administrative decisions, may be disrupted.

Tasks of the municipality related to the implementation of special benefits

The last category of benefits related to the defence of the Republic of Poland, in the realisation that the legislator provided for the participation of local governments, including municipalities, are special benefits. In the light of the provisions of Art. 642 of the Act on defence of the homeland, municipal authorities may also be obliged, among other things, to, in return for payment: adapt their real estate and movables to the needs of the State's defence, in a manner that does not change their properties and purpose; adapt constructed (reconstructed and extended) buildings and manufactured movables to the needs of the State's defence, in a manner that does not change their properties and purpose; maintain (relocate) production, repair and service capacities

necessary for the performance of tasks for the benefit of the State's security or defence or perform mobilisation tasks for the benefit of the Armed Forces²¹. In this respect, therefore, local self-government bodies may act as addressees of obligations resulting from the performance of such services.

Conclusion

In conclusion, it is worth emphasising that, in the light of the analysed Act, municipalities, as basic units of local self-government, have important duties in the scope of the implementation of tasks related to the defence of the Republic of Poland. It is worth noting that these are not only tasks of a rationing nature, covering registration and qualification activities carried out for the needs of the state's defence, but also key tasks in determining benefits for defence. The primary burden of performing tasks and competences in this respect has been transferred to the municipal level of local government, and in particular to the executive body of the municipality – the mayor (mayor, town president). An analysis of the Act's provisions leads to the conclusion that, taking into account doctrinal assumptions, the legislator treats local self-government units as entities supporting the government administration in taking measures to ensure state defence.

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21 M. Serowaniec, *Bezpieczeństwo jako przesłanka działania organów państwa w sytuacjach kryzysowych [in:] Uniwersalne standardy ochrony praw człowieka a funkcjonowanie systemów politycznych w dobie wyzwań globalnych*, eds. J. Jaskiernia, K. Spryszak, Toruń 2016, p. 593–594.

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Zadania gminy w dziedzinie obronności

Streszczenie

Zbrojna agresja Rosji na suwerenną Ukrainę spowodowała, że Polska, państwo bezpośrednio sąsiadującym z areną działań zbrojnych, stanęła przed wyzwaniem przygotowania rozwiązań prawnych adekwatnych do występujących zagrożeń. Konflikt zbrojny za wschodnią granicą naszego kraju zbiegł się w czasie z uchwaleniem ustawy z 11 marca 2022 roku o obronie Ojczyzny. Wydarzenia te stały się inspiracją do analizy rozwiązań ustrojowych włączających gminę w procedury minimalizowania skutków zagrożeń bezpieczeństwa związanego z potencjalnym konfliktem zbrojnym. Celem niniejszego opracowania jest charakterystyka zadań gminy jako podstawowej jednostki samorządu terytorialnego w Polsce na rzecz zapewnienia obronności państwa.

Słowa kluczowe: ustawa o obronie Ojczyzny, gmina, obronność, bezpieczeństwo, zadania własne gminy, zadania zlecone gminy, organ wykonawczy gminy