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Public order regulations as a special category of local laws issued by a provincial (voivodeship) governor and local government bodies in Poland

Abstract

The article discusses a specific category of local law regulations, i.e. public order regulations. The aim of the article is to determine the status of public order regulations in the Polish system of sources of law and to present the process of their enactment by Voivodeship Governor and local government bodies in Poland. Public order regulations as a source of generally applicable law may be issued by government administration bodies - the Voivodeship Governor (Provincial Governor) and non-combined administration, as well as local-government bodies; the Provincial Government does not have such powers. The spatial range of these regulations is limited to the powers of the body which enacts them. The public order regulations protect such values as the lives, health, and property of citizens, the natural environment, order, peace, and public safety. Due to the degree of interference caused by such provisions, they may be issued only in the case of the lack of regulation of the subject matter in other generally applicable laws, but only if this is necessary to guarantee the protection of the above-mentioned values. Interference with civil liberties by order regulations may not be excessive, but must be commensurate with the purpose which is to be achieved through them.

Key words: public order regulations, voivodeship governor (provincial governor), commune, district, local government

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Introduction

The catalogue of generally applicable law includes local laws, which may include order regulations restricting the use of constitutional rights and liberties vested in individuals. Public order regulations are enacted by territorial-government administration (including the Provincial Governor), and local-government authorities. The territorial range of public order regulations are limited to the area of operation of the bodies which enact them, so the territorial jurisdiction of a body is the primary determinant in this case.

The constitutional legislator clearly provides that the sources of the generally applicable law of the Republic of Poland are within the sphere of operation of the bodies which enact them, i.e. local laws[1]. The notion of "local laws" should be understood as normative Acts which contain abstract and general regulations, generally applicable in a given area of the country, issued by local- and regional-government bodies or territorial-government administration bodies, in accordance with, and within the limits of, statutory authorisations[2].

Article 94 of the Constitution of Poland states that local- and regional-government bodies and territorial-government administration bodies, on the basis of and within their statutory authorisations, may pass local laws applicable in their areas of operation; the rules and procedures for passing local laws are stipulated in the Act[3]. The matter regulated by a normative Act

1 Article 87 (2) of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483, as amended), hereinafter the Constitution of Poland. When interpreting the provisions of Article 87 (2) of the Constitution of Poland, referring to the sources of law, one should consider the rules adopted in the Polish legal system, i.e. the prohibition of presuming legislative powers and the prohibition of a broad interpretation of legislative powers. This is also related to the prohibition of introducing powers by analogy. In the case of any doubts as to the existence of a given power, it should be considered non-existent. Public-administration bodies are not governed by the rule that everything which is not forbidden is allowed, but by the rule that only that which has a clear legal basis is allowed (Judgment of the Voivodeship (Province) Administrative Court of 13 April 2017, II SA/Gl 126/17, LEX No. 2299832).

2 Judgment of the Voivodeship (Province) Administrative Court of 13 December 2017, I SA/Łd 968/17, LEX No. 2415062. Local laws are intended not only to apply to the residents of a given local- or regional-government body, but to all entities staying in the area of operation of a given body; Judgment of the Voivodeship (Provoncional) Administrative Court of 21 September 2017, II SA/Lu 564/16, LEX No. 2388584.

3 The system of generally applicable law sources in the Republic of Poland also includes local laws. Their territorial scope depends on the area of operation of the enacting body. Article 94 of the Constitution of Poland is crucial for a number of reasons. It established

passed by such a body may result from the body's statutory authorisation, but may not exceed its scope[4].

It should be stated that the authorisation to enact local laws (and public order regulations within their framework) for the Provincial Governor (as a territorial-government administration entity), and local and regional-government bodies, results from the Constitution of the Republic of Poland (which, however, does not name these authorised bodies), but introduces certain restrictions in this respect, stating that these laws are not autonomous.

It must be emphasised that due to the scope of influence of public order regulations on the status of external entities, these must be established solely for the protection of specified material interests. The degree of their onerousness for the entity concerned determines the application of such norms only as a last resort, in the absence of other legal measures which would be able to adequately secure a crucial statutory interest[5].

The aim of the article is to determine the status of public order regulations in the system of sources of law and to present the process of their enactment by Voivodeship Governor and local government bodies in Poland.

The enacting of public order regulations by a provincial (voivodeship) governor

On the basis of, and within the authorisations contained in, Acts, the Voivodeship (Provincial) Governor enacts local laws applicable in the given

a new category of local law, granting the power to enact it not only to Communes but also to other bodies operating in a given area, e.g. territorial-government administration bodies. It emphasises the concept of the official authority decentralisation adopted under the Constitution of Poland, and guarantees the independence of local- and regional-government bodies. These laws were included in the constitutional system of the sources of law, and should be announced according to the rules specified in the relevant Act. As laws generally applicable in the area of the operation of the bodies enacting them, they are controlled for compliance with the laws generally applicable in the whole country by the administrative court. M. Haczkowska, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, red. eadem, LEX 2014.

4 Judgment of the Voivodeship Administrative Court of 19 April 2012, II SA/Ke 484/17, LEX No. 2384014.

5 M. Karpiuk, *Przepisy porządkowe jako szczególny rodzaj prawa miejscowego*, „Studia Iuridica Lublinensia" 2015, No. 4, p. 22.

Province (Voivodeship) or its part[6]. If a Province has a broad geographical expanse, the Provincial Governor's order regulations may apply only to part of the province as a unit of the general geographical division of the country. The adopted solution might be justified, as there is no need for regulations of an interfering nature, which often create a substantial nuisance for their addressees, to apply to an area where there is no basis for their introduction.

Local secondary legislation is passed on the basis of, and within authorisations contained in, specific Acts. Thus, the general authorisation contained in Article 59 (1) of u.w.a.r. with regard to the local laws of a territorial--government administration should be deemed insufficient. This means that for the enactment of a specific secondary regulation, a statutory authorisation contained in an Act in the scope of substantive administrative law[7] is required each time.

At the Province level, the powers to enact generally applicable public order regulations rest solely with Government-administration bodies. The Regional (Provincial) Self-Government does not have such powers[8].

As stipulated in Article 60 of u.w.a.r., in the scope not regulated by generally applicable provisions, the Voivodeship Governor may enact order ordinances if they are indispensable for the protection of lives, health, or property, and to ensure order, peace, and public safety[9]. Order ordinances may impose fines for violations of their provisions. Order ordinances are immediately communicated by the Provincial Governor to the Prime Minister, the Province Marshal, District Governors, Mayors of cities and towns, and

6 Article 59 (1) of the Act of 23 January 2009 on the Voivodeship Governor and the government administration in the Province (consolidated text, Journal of Laws of 2017, item 2234, as amended), hereinafter u.w.a.r.

7 M. Pacak, K. Zmorek, [in:] eidem, *Ustawa o wojewodzie i administracji rządowej w województwie. Komentarz*, LEX 2013.

8 K. Walczuk, [in:] *Ustawa o wojewodzie i administracji rządowej w województwie. Komentarz*, red. M. Czuryk, M. Karpiuk, M. Mazuryk, Warszawa 2012, p. 161.

9 The responsibilities of the Provincial (Voivodeship) Governor as to the performance of protective tasks with the purpose of ensuring safety does not exclude the performance of such actions by other territorial public-administration bodies at the national and local or regional levels. However, the Provincial Governor is equipped with a broad range of tools to prevent hazards in the Province and deal with their consequences, M. Karpiuk, *Właściwość wojewody w zakresie zapewnienia bezpieczeństwa i porządku publicznego oraz zapobiegania zagrożeniu życia i zdrowia*, „Zeszyty Naukowe KUL" 2018, No. 2, p. 227. The Voivodeship Governor is also responsible for ensuring health safety. More on the issue: M. Karpiuk, J. Kostrubiec, *The Voivodeship Governor's Role in Health Safety*, „Studia Iuridica Lublinensia" 2018, No. 2, p. 65–75.

Heads of Communes where the ordinance is to apply. The Provincial Governor may enact order regulations when all the following conditions are met: in the province or its part the matter covered by the order ordinance is not regulated by any other generally applicable laws; their being passed is vital for the protection of lives, health, or property, and in order to ensure order, peace, and public safety[10]. The necessity to protect these values therefore justifies the introduction of restrictions on individual rights and liberties by way of an order ordinance.

In accordance with Article 31 (3) of the Constitution of Poland, restrictions on constitutional rights and liberties may be imposed only by statute, and only when necessary in a democratic State for the protection of its security[11] or public order, or to protect the natural environment, health, or public morals, or the freedoms and rights of other persons. Such restrictions must not violate the essence of these rights and liberties. The provision does not determine legal interest in general, but through the system interpretation it is possible

10 J. Kostrubiec, *Status of a Voivodship Governor as an Authority Responsible for the Matters of Security and Public Order*, „Barometr Regionalny. Analizy i Prognozy" 2018, vol. 16, No. 5, p. 37.

11 The sphere of safety is multidimensional, and thus difficult to define. This difficulty is further deepened by the dynamics of hazards, which form a crucial element in the definition. Thus, safety should be perceived in the context of circumstances which pose, or might pose, a threat to a specific entity or interests, M. Karpiuk, *Ograniczenie wolności uzewnętrzniania wyznania ze względu na bezpieczeństwo państwa i porządek publiczny*, „Przegląd Prawa Wyznaniowego" 2017, vol. 9, p. 11. Safety is one of the basic human needs which should be met by both public and non-public entities, by the interested parties to the extent to which they are able to meet this need, M. Karpiuk, *Ubezpieczenie społeczne rolników jako element bezpieczeństwa społecznego. Aspekty prawne*, „Międzynarodowe Studia Społeczno-Humanistyczne. Humanum" 2018, No. 2, p. 67. More on security: M. Karpiuk, *Position of the Local Government at Commune Level in the Space of Security and Public Order*, „Studia Iuridica Lublinensia" 2019, No. 2, p. 31; M. Czuryk, K. Dunaj, M. Karpiuk, K. Prokop, *Bezpieczeństwo państwa. Zagadnienia prawne i administracyjne*, Olsztyn 2016, p. 17–19; M. Karpiuk, *Zadania i kompetencje zespolonej administracji rządowej w sferze bezpieczeństwa narodowego Rzeczypospolitej Polskiej. Aspekty materialne i formalne*, Warszawa 2013, p. 77–89; M. Czuryk, K. Drabik, A. Pieczywok, *Bezpieczeństwo człowieka w procesie zmian społecznych, kulturowych i edukacyjnych*, Olsztyn 2018, p. 7; M. Karpiuk, *Konstytucyjna właściwość Sejmu w zakresie bezpieczeństwa państwa*, „Studia Iuridica Lublinensia" 2017, No. 4, p. 10; M. Karpiuk, N. Szczęch, *Bezpieczeństwo narodowe i międzynarodowe*, Olsztyn 2017, p. 13–40; M. Czuryk, *Właściwość Rady Ministrów oraz Prezesa Rady Ministrów w zakresie obronności, bezpieczeństwa i porządku publicznego*, Olsztyn 2017, p. 9; M. Karpiuk, *Prezydent Rzeczypospolitej Polskiej jako organ stojący na straży bezpieczeństwa państwa*, „Zeszyty Naukowe AON" 2009, No. 3, p. 389; M. Karpiuk, *Position of County Government in the Security Space*, „Internal Security" 2019, No. 1, p. 148; M. Bożek, M. Karpiuk, J. Kostrubiec, K. Walczuk, *Zasady ustroju politycznego państwa*, Poznań 2012, p. 67–68; M. Karpiuk, *Activities of the local government units in the scope of telecommunications*, „Cybersecurity and Law" 2019, No. 1, p. 45.

to establish that they are within the constitutional category of "the common good"[12]. A similar claim is made by M. Czuryk, who defines safety as a domain of great significance to the State as a public institution, and for society and its individual members, so it should be considered within the category of the common good[13].

The supervision procedure over the local order regulations of the Provincial Governor as specified in Article 61 u.w.a.r. also stipulates that the President of the Council of Ministers is the responsible body in these matters. The supervising body (the President of the Council of Ministers) repeals order regulations enacted by the Provincial Governor if they are in discord with Acts or regulations passed for the purpose of enforcing them, but it may also repeal them if they do not conform to the policy of the Council of Ministers, or violate the principles of accuracy and economy. In this regulation the legislator introduces criteria for the obligatory and optional application of the supervisory measure, i.e. the repealing of an order ordinance. The criterion of compliance with legal regulations obliges the President of the Council of Ministers to repeal an order ordinance if the lack of compliance with the policy of the Council of Ministers, or the violation of the principles of accuracy and economy, enable him/her to do so.

The Provincial Governor submits the order ordinance with grounds therefor, immediately after signing it, to the Minister in charge of public administration, through the responsible Minister, and, in cases when the regulation governs matters under the responsibility of two or more Ministers, through all the responsible Ministers. The responsible Minister issues an opinion on the compliance of the order ordinance with the generally applicable regulations, and submits it immediately, together with the corresponding local law, to the Minister in charge of public administration, who, after considering the said opinion, verifies the compliance of the aforementioned law with the generally applicable regulations and the principles of accuracy and economy. In the event of finding, during an inspection, irregularities justifying the repealing of the inspected local law, the Minister hands over the order ordinance to the President of the Council of Ministers with a draft supervisory order, and grounds therefor. The Minister in charge of public administration hands over the order ordinance with an opinion of the responsible Minister, and

12 M. Karpiuk, K. Prokop, P. Sobczyk, *Ograniczenie korzystania z wolności i praw człowieka i obywatela ze względu na bezpieczeństwo państwa i porządek publiczny*, Siedlce 2017, p. 24.
13 M. Czuryk, *Bezpieczeństwo jako dobro wspólne*, „Zeszyty Naukowe KUL" 2018, No. 3, p. 15.

information on the results of the inspection, to the President of the Council of Ministers for the purpose of inspecting the compliance of the local law enacted by the Provincial Governor with the Council of Ministers' policy[14]. Before the supervising body makes a decision as to the possible repealing of the order ordinance enacted by the Provincial Governor, it familiarises itself with the opinion of the responsible Minister and with the notice of the Minister in charge of public administration. If the responsible Minister is the Minister in charge of public administration, only the notice applies. The position of the Minister is not binding on the President of the Council of Ministers.

As stipulated in § 3 of r.t.k., before handing over the inspected order ordinance, with a draft supervisory order, to the President of the Council of Ministers, the Minister in charge of public administration may apply to the Provincial Governor to repeal or amend the challenged local law within his/her own capacity. The statement identifies and justifies the noted irregularities. In the event of the Provincial Governor's not repealing or amending the challenged local law within 14 days of the date of receiving the statement, the Minister immediately submits the draft supervisory order, with the grounds, to the President of the Council of Ministers. The provision introduces a self-monitoring mechanism. The body issuing a local law may in its own capacity repeal its order ordinance, or introduce changes thereto. Order ordinances passed as part of a self-monitoring mechanism are subject to supervision as new local laws.

In § 4 of r.t.k. the legislator also grants supervisory authority to the Minister in charge of public administration; however, he/she may inspect a local law enacted by the Provincial Governor, or request the responsible Minister to issue an opinion as to the compliance of this law with the generally binding regulations within his/her own capacity, only in justified cases. The provision creates space for a loose interpretation of "justified cases" which facilitate the commencement of supervisory activities.

The legislator provides for complaints about order regulations enacted by the Provincial Governor according to the procedure prescribed in Article 63 of u.w.a.r. Everyone whose legal interest or authorisation is violated by a provision of a local law (including an order ordinance), enacted by the

14 § 2 of the Regulation of the President of the Council of Ministers of 23 December 2009 on the inspection procedure of local laws enacted by the Provincial Governor and non-combined government-administration bodies (Journal of Laws No. 222, item 1754), termed r.t.k.

Provincial Governor, as to the scope of public administration, has the right to lodge a complaint against the relevant provision at the Administrative Court. Any complaint lodged according to the procedure provided in Article 63 of u.w.a.r. should pertain to local laws which have violated the legal sphere of the complainant, resulting in negative legal consequences for him or her which have already occurred, or are highly likely to occur in the future. The law, or its specific provision, must thus actually violate an existing legal interest of the complainant[15]. The legal basis for introducing a legal interest or authorisation are provisions of substantive law and litigation law. The distinction between substantive law and litigation law is significant depending on the subject matter of the regulation[16].

Legal interest, contrary to factual interest, should be interpreted as a range of authorisations of an entity granted by way of substantive-law provisions which shape its legal situation. The violation of such an interest is when a disputed act deprives or limits a right of the complainant arising from substantive legal regulations, imposes a new obligation, or changes the current obligation[17]. However, this must be an individual, direct, and real interest[18] which arises from the currently binding legal standard, which has been violated by a local law. It is crucial that it is proven by the complainant, as the complainant's finding a violation of a legal interest or authorisation of forms the basis for a substantive consideration of the complaint[19].

If the legal interest or authorisation of a specific entity is violated by an order regulation passed by a Provincial Governor, the Provincial Governor should be requested to desist from the violation, and if the request proves ineffective, a complaint should be filed with an administrative court. Contrary to legitimisation in administrative procedures, only the entity whose legal interest or authorisation has been violated is entitled to file a complaint on the basis of Article 63 of u.w.a.r. The legal interest or authorisation violation

15 Judgment of the Voivodeship (Province) Administrative Court of 27 February 2019, II SA/Gd 522/18, LEX No. 2635468.

16 Judgment of the Supreme Administrative Court of 3 April 2012, II FSK 76/12, LEX No. 1252176.

17 Judgment of the Supreme Administrative Court of 19 June 2009, II FSK 205/09, LEX No. 561935.

18 Judgment of the Supreme Administrative Court of 23 November 2005, I OSK 715/05, LEX No. 192482.

19 Judgment of the Supreme Administrative Court of 18 December 2009, I OSK 1539/09, LEX No. 582851.

is thus a premise of the admissibility of the complaint to the administrative court, and is a starting point for its substantive assessment. The assessment refers to the nature of the violation of the legal interest or the authorisation of the complainant. The infringement of the legal interest or authorisation of the complainant occurs when it is a consequence of the violation of an objective legal arrangement (a substantive- or litigation-law standard)[20].

The enacting of public order regulations by a Commune government

Public order regulations may also be enacted by local-government bodies, including by the basic local-government entity, the Commune. According to the legal definition, a Commune is a local-government community created, by virtue of law, by its residents, and occupying a certain territory[21]. Therefore, a Commune is a legal entity separate from the State, and a form of decentralisation, which is composed *ex lege* of the residents of a specific area, an entity with its own property, constituting a substantial basis for performing public tasks entrusted to it by the State, with the administrative power and granted independence guaranteed in the Constitution and judicially protected[22].

As stipulated in Article 40 (3-4) of u.s.g., in a scope not regulated in separate Acts or other generally binding regulations, the Commune Council may enact order regulations if this is necessary for the protection of the lives or health of the citizens, and to ensure order, peace, and public safety. Order regulations may provide for fines for their violation[23]. Legal protection ensured by Commune order regulations covers the following assets: life, health, order, peace, and public safety. It must be stated that, according to the legislator, the protection of lives or health relates to citizens, so it would seem that the lives and health of people who are not Polish citizens are not protected by local

20 Judgment of the Province Administrative Court of 19 April 2012, II SA/Ke 1276/18, LEX No. 2627758.

21 Article 1 of the Act of 8 March 1990 on commune government (consolidated text, Journal of Laws of 2019, item 506), hereinafter u.s.g.

22 M. Karpiuk, *Samorząd terytorialny a państwo. Prawne instrumenty nadzoru nad samorządem gminnym*, Lublin 2008, p. 58.

23 See also: M. Czuryk, J. Kostrubiec, *The legal status of local self-government in the field of public security*, „Studia nad Autorytaryzmem i Totalitaryzmem" 2019, No. 1, p. 39–41.

order regulations, which would be absurd, and contrary to the principles of a democratic state ruled by law. Thus, it should be assumed that the Commune Council may enact order regulations if they are necessary for the protection of the lives and health of everyone residing in the Commune area, not just the citizens.

The enactment of public order regulations in a Commune is possible when two of the following conditions are met: 1) objective, which requires an assessment of the current legal status, and stating that the matters under regulation have not been regulated in Acts of other generally binding regulations; 2) subjective, which is a result of the assessment by the body enacting the order regulations, leading to the conclusion that the assets enumerated in the Act were or can be violated, and require protection[24].

Basing the key elements of the construal of local order regulations on vague criteria allows their broad application, as the above-mentioned conditions do not have clear boundaries. The use of vague notions can result in considerable practical difficulties in their enactment, each time forcing the local legislator to assess to what extent an issue is not being regulated in generally binding regulations. Due to the complexity of local order-regulation mechanisms, determining the admissibility and rules of enacting them must always relate to the rationality and common sense of local legislators, requiring insight and prudence in using the authority granted by the lawmakers[25].

In Article 40 section 3 of u.s.g., the legislator, when defining the responsibilities of the Commune Council with regard to issuing order regulations, clearly states that these regulations may be issued if they are necessary to protect the assets listed in this provision. The norms included in Article 40 (3) of u.s.g. are not subject to a broad interpretation, because order regulations may be enacted only in exceptional, clearly identified, circumstances[26].

Public order regulations enacted solely on the basis of general statutory authorisations contained in systemic legislation involve separate types of local laws. They have a special nature and objective, as a means of preventing sudden threats to assets subject to legal protection. Local order regulations, unlike secondary legislation, are not passed for the detailed implementation of

24 B. Dolnicki, [in:] *Ustawa o samorządzie gminnym. Komentarz*, red. idem, LEX 2018.
25 D. Dąbek, [in:] *Ustawa o samorządzie gminnym. Komentarz*, red. P. Chmielnicki, LEX 2013.
26 Judgment of the Supreme Administrative Court of 13 February 2018, II OSK 994/16, LEX No. 2473610.

specific systemic substantive law regulations, but in order to regulate a specific aspect of social relations not accounted for by the legislator, whose boundaries are set only by the subject matter of the regulation (the protection of lives and health, safety, order, etc.). The goal us thus to regulate specific local situations of an extraordinary nature which are not covered by national regulations[27].

An analysis of Article 40 (3) of u.s.g. shows that in order to introduce specific norms in the form of order regulations, two conditions must be met simultaneously. According to the first, the matter subject to regulation must not be regulated in other generally binding regulations. According to the second, the introduction of specific norms must be justified with the protection of assets referred to in Article 40 (3) of u.s.g.[28].

The rules introduced by Article 41 (1) of u.s.g. states that local laws are passed by Commune Councils by way of resolutions. However, the rule is not absolute, as in Article 41 (2) of u.s.g., the legislator decided that in urgent cases public order regulations may be passed by the Head of a Commune (the Mayor of a Town/City) in the form of an ordinance. As stipulated in Article 41 (3) of u.s.g., an order ordinance is subject to approval at the nearest Commune Council session. It becomes invalid when the approval is not granted, or a motion for approval is not submitted at the next Commune Council session[29].

In Article 41 (2) of u.s.g., the legislator legitimises a monocratic body in the ambit of performing the legislative function (in the sphere of enacting generally

27 Judgment of the Voivodeship (Province) Administrative Court of 19 April 2012, II SA/Ke 588/17, LEX No. 2411571.

28 Judgment of the Voivodeship (Province) Administrative Court of 18 October 2011, II SA/Wr 501/11, LEX No. 1103075.

29 Article 41 (3) provides for the legal obligation of the Head of the Commune (Mayor of the Town/City) to present an enacted ordinance at the Commune Council session in a time enabling it to be assessed during the next session of the Council. The presented ordinance is subject to assessment with regard to its compliance with the law, and its adequacy for the factual status, forming the basis for passing the ordinance, existing at the time of enacting and proceeding with the approval of the ordinance. The Commune Council's assessment of the ordinance passed by the executive body of the basic local- and regional-government unit, the objective truth principle should be taken into consideration, expressed in the obligation to consider all essential circumstances of the case, which is associated with the continuing validity of the enacted ordinance. Disregarding these circumstances determines the degree of the defectiveness of the Act approving the ordinance. Discretionary authorisations are thus highly restricted for the Commune Council. In the event of a failure to present the ordinance, it is obligatorily invalidated within a time limit set at the discretion of the Commune Council. P. Dobosz, [in:] *Ustawa o samorządzie gminnym*..., red. P. Chmielnicki.

binding regulations) to pass order regulations in the form of ordinances. These authorisations are of a unique nature, because, as a rule, local laws, including order regulations, are passed by the Commune Council as the legislative body, and not by the Head of the Commune (the Mayor of a Town/City)[30].

In the event of a failure to present for approval, or a refusal to approve, an order ordinance, the Commune Council specifies the time limit for its losing its binding force, on the basis of Article 41 (4) of u.s.g. The lack of approval of an order ordinance should be considered the equivalent to a refusal to approve it, which leads to such legal consequences as a refusal to approve, or not presenting the ordinance for approval, at the next Commune Council session[31].

Pursuant to Article 41 (5) of u.w.a.r., the executive body of the Commune was imposed with a disclosure obligation, under which the Head of the Commune (the Mayor of a Town/City) sends, on the day after enacting them, a carbon copy of the order regulations to the Heads of neighbouring Communes (the Mayors of neighbouring Towns/Cities) and the Governor of the District in which the Commune is located. The said disclosure obligation refers to order regulations passed by the Commune Council and the disclosing body[32].

Public order regulations may be complained against to the administrative court, pursuant to Article 101 of u.s.g., in accordance to which everyone whose legal interest or authorisation is violated by the given resolution, or by an ordinance passed by a Commune body in a public-administration matter, may lodge a complaint against the resolution or ordinance to the administrative court. Such a complaint may be lodged in one's own name, or as a representative of a group of Commune residents who agree therefor in writing. A local order regulation of a Commune government may be thus complained against only by the entity which demonstrates a violation of its legal interest or authorisation, rather than only the existence of a legal interest or authorisation. This makes the right to lodge a complaint highly restricted.

30 Ibidem.

31 Decision of the Supreme Administrative Court of 12 July 2011, II OSK 1336/11, ONSAiWSA 2012, No. 2, item 26.

32 M. Karpiuk, *Akty prawa miejscowego organów samorządu terytorialnego*, [in:] idem, J. Kostrubiec, M. Paździor, K. Popik-Chorąży, K. Sikora, *Legislacja administracyjna*, Warszawa 2013, p. 119.

The enacting of public order regulations by a District government

The second level of local self-government with the authority to enact public order regulations is the District government. It may be used only when the conditions (threats) constituting the basis for enacting such regulations occur in more than one Commune.

Similar to the case of the Provincial Governor and Commune government, in Districts, in matters not regulated in separate Acts or in other generally applicable regulations, in particularly justified cases, the District Council may pass District order regulations if they are vital for the protection of the lives, health, or property of citizens and the natural environment, or to ensure order, peace, and public safety, and if the said conditions occur in more than one Commune. District order regulations may provide for fines for their violation[33].

The District legislative body may enact public order regulations only in particularly justified cases, if the matter is not regulated in generally applicable regulations, and, among other things, there is a need to ensure safety[34]. The assets listed in Article 41 (1) of u.s.p. are protected if the circumstances, in fact, point to a particularly justified case, and thus the threat occurring in a District is of a qualified nature, and there is no regulation on the matter in other generally binding regulations.

The specific characteristic of public order regulations is the possibility of establishing sanctions for their non-observance, in the form of fines, which can be fixed by the District Council in an amount stated in the respective Act, rather than on a discretionary basis. It should be emphasised that the determination of a fine in an order regulation is optional, and based on the discretion of the legislative body[35].

District local laws are enacted by the District Council in the form of a resolution, unless the Act containing an authorisation to issue the law provides otherwise; such power is granted by way of Article 42 (1) of u.s.p.[36],

33 Article 41 of the Act of 5 June 1998 on District government (consolidated text, Journal of Laws of 2019, item 511, as amended).

34 M. Karpiuk, *Miejsce samorządu terytorialnego w przestrzeni bezpieczeństwa narodowego*, Warszawa 2014, p. 50.

35 B. Dolnicki, [in:] *Ustawa o samorządzie powiatowym. Komentarz*, red. idem, LEX 2007.

36 As a local law, a District Council resolution is usually passed by a simple majority of votes in the presence of at least half the statutory members of the Council in an open vote.

with Article 42 (2) of u.s.p. allowing public order regulations in urgent cases to be passed by the District Board. Article 42 (2) of u.s.p. clearly states that the District Board is also authorised to execute legislative powers in the District. This power of the Board should be treated as an exception to the general rule relating to the Board as a legislative body. It should be stressed that the power relates only to one type of local laws – order regulations - and that it applies only under exceptional circumstances, when passing such laws by the District Board is justified with the necessity to counteract unexpected threats, i.e. in urgent cases. It should also be emphasised that the powers relate only to the District Board, and cannot be exercised by other entities, in particular by the District Governor[37].

District order regulations passed by the District executive body are subject to approval at the next Council session. They are invalidated if not presented for approval, or in the case of a refusal to grant the approval. The time limit for the validity of the regulations is specified by the District Council. These rules are introduced by Article 42 (1a) of u.s.p. The subsidiarity of the legislative power of the District Board points to the necessity of the approval of public order regulations by the executive body of the local-government unit by the District Council, and the lack of such approval, regardless whether the fact arises from the Board's failure to present the resolution containing the order regulations for approval, or from a negative assessment of such a law by the legislative and supervisory body after its submission results in the loss of their binding force.

The disclosure obligation imposed by Article 42 (4) of u.s.p. relates not to the executive body of the District but to the President of the body. The District Governor sends a carbon copy of order regulations to the executive bodies of Communes located in the District, and to the Governors of neighbouring Districts, on the day following their enactment. Given the above, the enactment order regulations generates an obligation for the District Governor to notify thereof the executive bodies of the Communes located in the District, and to the Governors of neighbouring Districts [38].

M. Czuryk, *Przepisy porządkowe wydawane przez organy stanowiące samorządu lokalnego*, „Teka Komisji Prawniczej PAN Oddział w Lublinie" 2020, No. 1, p. 72.

37 D. Dąbek, [in:] *Ustawa o samorządzie powiatowym. Komentarz*, red. P. Chmielnicki, LEX 2005.

38 M. Karpiuk, J. Kostrubiec, *Rechtsstatus der territorialen Selbstverwaltung in Polen*, Olsztyn 2017, p. 102.

Similarly to public order regulations passed at the Province and Commune levels, for Districts the legislator has also provided for the possibility of lodging complaints about regulations pursuant to Article 87 of u.s.p. Everyone whose legal interest or authorisation is violated by a given resolution passed by a District body in a public-administration matter may lodge a complaint with the administrative court against the resolution. Such a complaint may be lodged with the administrative court in one's own name or as a representative of a group of District residents who agree therefor in writing. In Article 87 (1) of u.s.p. the legislator indicates that everyone whose legal interest or authorisation is violated by the given resolution passed by a District body in a public-administration matter may lodge a complaint against the resolution to the administrative court. The legal interest referred to in this provision consists of a connection between the entity's legal situation and a specific legal norm. The connection should be current, real, and individual. The requirement is thus not met by only the hypothetical or historical impact of a legal norm on the legal situation of a given entity, or by lodging a complaint on behalf of an entity other than the complainant, or in the general interest. An entity interested in the adoption or repealing of a given law which does not have a direct impact on its legal sphere does not, therefore, have a legal interest in the matter, but only a practical interest[39].

Conclusions

The sphere of public security and public order takes an important place in the tasks fulfilled by the voivodeship governor (wojewoda) and the bodies of local government units. Of the means for the implementation of tasks related to safety and security, the adopting of public order regulations is an important power. The conditions for issuing public order regulations by the voivodeship governor and local government bodies are similar. The justification for the issuance of public order regulations differs, in the case of the voivodeship

39 Judgment of the Supreme Administrative Court of 19 June 2018, II OSK 3147/17, LEX No. 2524307. Contrary to the legitimisation of an administrative procedure as specified in k.p.a. (Code of Administrative Procedure), in which everyone with a legal interest or authorisation pertaining to the procedure may be a party thereto, only the entity whose legal interest or authorisation has been violated is entitled to lodge a complaint pursuant to Article 87 (1) of u.s.p., Judgment of the Province Administrative Court of 3 October 2017, II SA/Ol 707/17, LEX No. 2375355.

governor being not an expression of the principle of autonomy, but a form of fulfilling the obligation to ensure security and safety by government administration bodies and the necessity to supplement the relevant legislation. The differences also concern the criteria and entities subject to audit and supervision, which is obvious in the light of the constitutional principle of self-government autonomy.

The powers of local self-government in the area of adopting public order regulations are first and foremost a manifestation of its autonomy and an expression of the decentralisation of state's activity in terms of law making. On the other hand, they allow for the effective implementation of tasks related to ensuring public security and order. It is worth noting that local government bodies, which are closest to their inhabitants, can quickly and effectively identify threats occurring in their areas of responsibility. This is important, as the dynamics of contemporary threats is high. The voivodeship governor, when carrying out tasks in the field of central government administration in the region, is not only the executor but also the initiator of security policy. The voivodeship governor performs tasks related to security and safety either on his own or through the bodies of integrated administration in the region. However, the powers to enact public order regulations as part of the integrated central government administration is vested exclusively in the voivodeship governor.

The powers of the voivodeship governor and the municipal and district (powiat) government bodies regarding the enacting of enforcement regulations is an expression of the necessary deconcentration[40] (voivodeship governor) and decentralisation (local government) of the law-making activity of public administration. This is the way they form a complementary and, at the same time, particularly important element of the local public security and order system.

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Przepisy porządkowe jako szczególna kategoria aktów prawa miejscowego stanowionych przez wojewodę i organy samorządu terytorialnego w Polsce

Streszczenie

W artykule podjęto problematykę dotyczącą stanowienia szczególnej kategorii aktów prawa miejscowego, jaką są przepisy porządkowe. Celem artykułu jest określenie statusu przepisów porządkowych w polskim systemie źródeł prawa oraz przedstawienie procesu ich stanowienia przez wojewodę i organy samorządu terytorialnego w Polsce. Przepisy porządkowe jako źródło prawa powszechnie obowiązującego mogą wydawać organy administracji rządowej – wojewoda oraz administracja niezespolona, a także organy samorządu lokalnego, samorząd województwa nie posiada takich kompetencji. Zasięg przestrzenny takich przepisów ograniczony jest do obszaru właściwości organu, który je ustanowił. Za pośrednictwem porządkowych aktów prawa miejscowego chronione są takie wartości, jak: życie, zdrowie, mienie obywateli, środowisko naturalne, porządek, spokój, bezpieczeństwo publiczne. Ze względu na stopień ingerencyjności takich przepisów mogą być one wydawane wyłącznie w przypadku braku regulacji normowanej materii w innych przepisach powszechnie obowiązujących i wyłącznie wówczas, gdy jest to konieczne do zagwarantowania ochrony wyżej wskazanych wartości. Ingerencja w swobody obywatelskie za pośrednictwem przepisów porządkowych nie może być nadmierna, a adekwatna do celu, jaki ma być za ich pośrednictwem zrealizowany.

Słowa kluczowe: przepisy porządkowe, wojewoda, gmina, powiat