



ISSN 1648-2603 (print)
ISSN 2029-2872 (online)

VIEŠOJI POLITIKA IR ADMINISTRAVIMAS
PUBLIC POLICY AND ADMINISTRATION
2020, T. 19, Nr. 2 / 2020, Vol. 19, No 2, p. 242–252.

ESTABLISHING ORDER REGULATIONS IN MUNICIPALITIES AS AN ELEMENT OF LOCAL SECURITY PROTECTION

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DOI: 10.13165/VPA-20-19-2-07

Abstract. *The aim of this article is to analyze the process of establishing ordinance regulations in Polish municipalities and their role as a tool to protect local security. The article points to the essence of local security, and distinguishes and characterizes the individual levels of implementation, by local authorities, of tasks in the field of local security protection (crisis management, tasks implemented in emergency states, and tasks carried out under the standard operation of local government bodies). Against this background the verification of the statutory and subjective scope of establishing ordinance regulations in municipalities, the reasons for establishment of these provisions, and the principles legitimizing the process of their adoption were established. In order to undertake the research outlined above, the current normative acts and literature on the subject were reviewed, allowing for critical analysis. In turn, the synthesis of collected research material made it possible to form conclusions and final remarks.*

Raktiniai žodžiai: *savivaldos institucijos, potvarkiai, vietos teisės aktai, saugumo užtikrinimas*

Keywords: *municipality authorities, order regulations, local law acts, security protection*

Introduction

This paper deals with the issue of the protection of local security in the territory of the smallest unit of Polish local government – the municipality. The problem of determining the essence and significance of the concept of local security and its relation to state or global security has been analyzed. The study also indicates the role of public administration bodies in the system of entities competent in the area of security and public order protection, as well as the special types of powers of these bodies in the area of law creation and in the form of local law acts.

The article specifies that the various levels of implementation of tasks in the scope of protection of local security are implemented by the municipality authorities and the bodies of the other two local government units. The first of these levels are the tasks implemented as part of crisis management, the second is carried out when one of the three emergency states is announced, and the third are the tasks performed as part of the normal (standard) operation of local government bodies.

In addition, in the area of standard municipal activities aimed at ensuring public order and security, the right to establish local law by the commune (i.e., municipality) authorities under their specific form, namely the form of order regulations, was also discussed. This article analyzes the statutory scope of making such regulations and the principles legitimizing the process of their establishment. The study also specifies the premises for establishing order regulations, the fulfillment of which gives the possibility for establishing local law acts of an ordinal nature. The first of these premises is objective and concerns the current legal status. On the other hand, the subjective one is related to the assessment of the actual state, constituting an objective threat to the protected goods and the resulting need to undertake actions aimed at ensuring their proper protection. At the level of the municipality, the issuing of regulations is dependent on the need to ensure protection of the life or health of citizens and to ensure order, peace, and public safety.

The issues related to generally understood security and public order and their protection arouse an increasing interest of both the doctrine and institutions that, in practice, bear responsibility for preventing and combating the effects of events directly affecting the protected goods.

The research in this area was preceded by a query of sources and literature and their selection in the field of administrative law science. The results of the research, empirical studies, and an analysis of the content of the normative acts in force allowed a wider recognition of the research problem and the orientation of basic research.

An analysis of the collected literature on the subject, including issues of law-making by public administration bodies and their role in the area of public safety and order protection, enabled us to distinguish the role, the subjective scope, and the objective scope of organizing regulations in municipalities, the reasons for their establishment, and the legitimacy of the process of their establishment.

Various categories of source material were used to develop this article, including binding normative acts and comments on these acts, and scientific papers and articles published in professional journals in the field of administrative law science.

The detailed methodology of the basic research was determined by the main objective of the deliberations and the research problem undertaken. The applied method of retrospective analysis allowed for the determining of the premises for establishing order regulations, and the possibility of using them as a tool to protect local security. Synthesis was another method used in the paper, which made it possible to create conditions for making generalizations in the form of theses and conclusions.

The essence of local security

The importance of the external dimension of the European Union's (EU) policy in the area of freedom, security, and justice underlines the need for increased integration of these policies into the general policies of the EU (European Council 2010). The very concept of security has not been clearly defined in the applicable law, and its role and significance have been the subject of extensive analyses and reflections in the literature on the subject. It has also been pointed out that security could be considered in different dimensions and in various areas (Brzeziński 2009; Pieprzny 2008; Sommer, Sommer, and Zakrzewski 2018). One can talk about local or global security when a micro or macro scale is applied to issues of security and protection. Local security is a look at threats and preventive measures aimed against them from the perspective of small units, such as local government units, for example a municipality. This perspective allows one to take into account the social awareness of people living in a given area, those who identify with it, and who have their own needs, habits, and traditions, often different from those of other, even very similar, individuals. It is worth emphasizing that local security may cover the same problems (communication, fire, ecological, crime risk) that appear in state or global security (Shah 2005).

Usually, however, the objective dimension of local security is narrowed to protect against basic threats that affect the personal sense of security of an individual or a small community (Pomykała and Polinceusz 2017).

The implementation of guarantees on security and public order is a task for which the state is responsible, but the protection of these goods is increasingly perceived in a local context. As Z. Grzywna points out, "it appears from public knowledge and statistics that over 90% of events or threats are local in nature and local forces always react first" (Grzywna 2017, 70). This state of affairs corresponds with an awareness of the need to take actions in this area precisely in the field, since these are public administration bodies operating locally through direct contact, and they are aware of the scale and types of threats. Undoubtedly, this may also have an impact on the effectiveness of the activities undertaken in this area (Oleksiewicz and Polinceusz 2012).

The types of tasks carried out by municipal authorities in the area of local security protection

According to the intention of the legislator, each type of Polish local government unit is charged with the implementation of adequate and proportionate tasks to the potential of these units and their place in the local government structure. These tasks correspond to the scope of competences assigned by law which set the rights and duties of individual local government bodies which, through their activity in the relevant area, are to strive for a specific goal – the implementation of the assigned task (Novikovas 2009).

The tasks in the scope of security and public order protection were included by the legislator in the basic tasks of individual local government units. The sources of the obligation to exercise them should be sought in individual acts of the system, namely in: Art. 7 para. 1 of the Act of Municipal Government (The Act of March 8, 1990, on Municipal Local Government, i.e., OJ 2018 item 994 with later amendments); Art. 4 para. 1 point 15 of the Act of District Government (The Act of June 5, 1998, on District Local Government, i.e., OJ 2018 item 995); and Art. 14 para. 1 point 14 of the Act of Provincial Government (The Act of June 5, 1998, on the Local Government of Provinces, i.e., OJ 2018 item 913). In connection with the implementation of the above tasks, the competences of the municipal bodies and other local government units result primarily from special administrative law, which determines whether these tasks are obligatory and determines their actual scope and the forms in which they can be implemented (Polinceusz 2013).

Protection of local security is carried out by the municipal authorities and the other two local government units in several areas.

The first group of tasks result from the Act on Crisis Management of April 26, 2007 (i.e., OJ 2018 item 1401), the role of which is to fill a normative gap which is a source of competence of public administration bodies operating in their normal functioning, consisting of tasks based on standard (daily) procedures and actions, and their actions in extraordinary situations. The situations in question have been referred to as crisis situations which one should understand as situations adversely affecting the level of safety of people, property in large amounts, or the environment, causing significant restrictions in the operation of competent public administration bodies due to the inadequacy of forces and resources.

The second group of tasks is initiated by the occurrence of specific threats that justify an introduction of one of the extraordinary states (OTK-A 2009/4/51, Journal of Laws No. 65, item 553), i.e., martial law, a state of emergency, or a state of natural disaster (Art. 228 of the Constitution of the Republic of Poland of April 2, 1997, OJ 1997 No. 78 item 483). However, as noted by J. Korczak, these are tasks that both municipal authorities and other local government bodies do not perform in their day-to-day operations, and for their implementation these bodies have been equipped with special rights which, apart from in extraordinary states, they are not ordinarily entitled to. In addition, regulations constituting extraordinary conditions introduce specific measures of influence both between bodies of local government units as well as between government administration bodies and local self-government bodies (Korczak 2009).

The third group of tasks includes those that are implemented as part of the normal (standard) operation of local government bodies. In the case of municipalities, this area includes the obligation to draw up operational plans for flood protection (Art. 31a of the Act on Municipal Local Government), announcing and dismissing the ambulance service and alarm, and the right to establish a uniformed municipal guard (Art. 1 para. 1 of the Act of August 29, 1997, on Municipal Guards, i.e., OJ 2018, item 928), at the territory of the municipality and outside (with regard to fire protection) the municipal professional fire brigade (Art. 17 of the Act of August 24, 1991, on Fire Protection, OJ 2018, item 620). However, in the case of services appointed in the strict sense to protect public safety and order and fire protection – the Police and State Fire Service having the status of state-owned formations – the activities of municipal bodies have only a limited impact (Ostapski 2009; Polinceusz 2013).

Subject and object scope of establishing order regulations in municipalities

What is important, in the area of standard activities of the municipality aiming at ensuring public order and security, is that it is also the right of the local authorities to legislate under a special form, namely order regulations.

The possibility of law-making by administrative bodies is a significant aspect of the generally understood activities of public administration bodies. In the process of administrative legislation (Polinceusz 2010), it is essential to legislate on local law, that is the generally applicable laws on the scope of application of the designated area of activities of the body that established them, issued only on the basis and within the limits of the authorizations contained in the acts (Polinceusz 2013). This means that public administration bodies acting in the role of an administrative legislator cannot benefit from unrecorded freedom to create this law (Duniewska and Stahl 2012), nor from complete freedom in the choice of legal forms of this activity. The failure to apply the right form of action prescribed by law very often leads to the repeal of the act (Karpiuk 2009).

In the light of the provisions of the Constitution of the Republic of Poland, not only central administrative authorities but also some of its local organs were incorporated into law-making activities of a universally binding nature. According to Art. 94 of the Constitution of the Republic of Poland, local government bodies and local government administration bodies are entitled to issue local law acts. Direct indication of these bodies is found in constitutional laws on the basis of which municipal councils, district councils, provincial councils and, conditionally and exceptionally, executive bodies of municipalities and districts, provinces, and some groups of organs of the non-combined administration (Polinceusz 2010; Polinceusz 2015), have competences and rights to create local law.

Order regulations set up by the municipality authorities, like all local law acts, in order to have the right to interfere in the sphere of the entity to which they are directed, must be based on and within the limits set by the act. In this respect, it is not possible to apply a presumption and an interpretation (Karpiuk 2015). It should be added that in relation to this particular category of local law acts, a number of specific legal regulations

are provided. They are justified by their exceptional nature. A fact that should be considered as significant is that the body constituting the ordinance provisions has the possibility to sanction non-compliance with the standards set by it. Acts of law adopted by the executive bodies of municipalities and districts may provide for fines imposed by the provisions of the Act of May 20, 1971, of the Code of Offenses (i.e., OJ 2018, item 618). It should be noted that the legislator did not foresee the possibility of applying this type of sanction in the case of other types of local law acts – neither implementing provisions, nor systematic and organizational acts (Judgment of the Supreme Administrative Court in Wrocław of March 4, 1993, SA/Wr 1449/92, e-LEX).

As for the rule, the legislator authorized municipal' organs to issue ordinances.). The commune head (the mayor or president of the city) has the right to legislate local laws only to a limited extent that should be clearly marked, on an exceptional basis. The municipality head (mayor or president of the city) has the right to make only one type of local law, namely ordinance regulations. In addition, they can only constitute them if the authorized bodies constituting these local government units, i.e., the municipal (city) council, cannot benefit from the entitlements specified in the act. The premises determining the possibility of establishing such regulations by the municipality head -- that is all urgent situations requiring quick normative reaction which, due to its session system, it is not able to ensure -- is justified in allowing the issuing of order regulations to the more-available executive body of the municipality operating on a professional basis (Jaworska-Dębska and Budzisz 2012).

The law-making powers of executive bodies of territorial local government units in the scope of establishing procedural provisions are also characterized by temporariness. As noted by B. Jaworska-Dębska and R. Budzisz (2012), the peculiar temporality of the occurrence of these rights is expressed in the fact that they expire when the organ constituting the municipality regains an opportunity to exercise its law-making powers. Moreover, in accordance with the provisions of the Local Government Act, the executive provisions issued by the executive body are subject to approval at the nearest session of the governing body, i.e., the municipality (city) council, and only up to that time may be valid without the participation of a constituting body. If they are not approved or are not submitted for approval, they will cease to have effect as of the date specified in the resolution of the relevant council. This procedure also indicates the uniqueness of these kind of rights-forming powers and even their "makeshift" character (Jaworska-Dębska and Budzisz 2012).

Premises for establishing order regulations

Through the provisions of the Local Government Act, two types of premises for establishing procedural provisions have been formulated, from which the possibility of establishing local law acts of an ordinal nature has been formulated, regardless of which of the organs of the smallest local government unit at a given moment acts as the legislator. According to Art. 40 para. 3 of the Act of Municipal Government, in areas not covered by separate laws or other generally applicable regulations the municipal council may issue

order regulations if it is necessary to protect the life or health of citizens and to ensure order, peace, and public safety.

The first of the premises formulated by the legislator is, therefore, an objective, and concerns the current legal status, which means the existence of a sphere that has not been previously regulated in statutes or other generally applicable regulations. This means that the local governing body acting as a local legislator has been obliged by the legislator to preliminary examination of the current legal status in order to find a binding legal norm regulating the matter that would be the subject of regulation aimed at establishing a regulation order. This obligation, in the opinion of the Supreme Administrative Court, is to eliminate the possibility of duplication, corrections, or even changes of acts universally binding by the body constituting the order provisions, and at the same time to allow for complementing these acts where they do not reach within their scope (Judgment of the Supreme Administrative Court in Krakow of December 21, 1993, SA/Kr 1773/93, e-LEX).

Interpretation problems may also be raised by the phrase used by the legislator: “in matters not regulated in separate laws or other generally applicable regulations.” It should be assumed that the notion of “unsettled scope” used by the legislator should be understood broadly, as the lack of precise regulation contained in other provisions which fully settle a given issue in a normative way, and not only as a notion of complete lack of regulation in this respect. Dąbek, using the phrase “in an unregulated area” rather than “in matters not settled,” directs the way of interpreting this premise (Dąbek 2007). Accepting a different position as just would mean that it is impossible to legislate on the protection of health, property, safety, and public order because each of these areas is regulated in a more or less detailed way.

Another premise is subjective and is related to the assessment of the actual state by the issuing authority. The issuance of a local law act of an administrative nature must, therefore, be preceded by the conviction that the goods listed in the act have been or may be infringed, and that they require protection. The basis for issuing order regulations is the need to ensure proper protection of the goods specified in the act. The catalog of protected goods established by the legislator through the possibility of issuing order regulations covers the protection of the life or health of citizens, ensuring order, peace, and public safety (Dąbek 2007).

The limitation of the possibility of establishing the face-related regulations solely for the purpose of protecting the enumerated protected goods thus determined is undoubtedly to narrow the area in which they can be established. In this way, the legislator has defined a specific boundary for procedural regulations. However, this barrier was determined by words that were blurred, requiring further interpretation and a deeper assessment. In addition, the legislator clearly indicates the uniqueness of the action, which is the establishment of order regulations. According to Art. 40 sec. 3 of the Act of Municipal Local Governments, this action can only be taken if it is “necessary to protect” the goods indicated. The idea of this regulation is that order regulations should be issued only in emergency situations in order to take immediate action to effectively limit the negative consequences of the phenomena that harm the rights protected by law. The criterion of

indispensability of the action is of an evaluative nature, and is subject to interpretation in a specific situation.

The values that determine the possibility of establishing order regulations have been defined in a way that is not very precise, which in consequence means a fairly wide range of authorization to lay down order rules, which may raise doubts as to their compliance with the Constitution of the Republic of Poland (Karpiuk 2015). On the other hand, as the Constitutional Tribunal stated in its Judgment of July 8, 2003, the taxable enumeration of protected goods is intended to prevent the issuance of procedural provisions for purposes other than those specified in the Act (Judgment of the Constitutional Tribunal of July 8, 2003 Ref. file P10/02). Establishing ordinal regulations cannot be used for current management in a given area, but only in order to counteract real threats. The authorization to establish order regulations allows for imperious interference in the rights and freedoms of persons residing in a given local government unit, so it must not be understood indiscriminately -- it must directly relate to the need to protect the goods indicated by the legislator. The problems of ensuring security in municipalities lie in the overly narrow approach to the security of the population and the entities responsible for it in the municipality. Insufficient coordination, planning, control, and evaluation of the security activities of these responsible actors are closely interlinked issues. They need to be addressed in a comprehensive manner (Astrauskas, Pitrenaitė, and Mikulskienė 2012).

Conclusion

1. The preparation of various types of undertakings and concepts related to the proper placement, in the structure of public administration bodies, of competences aimed at increasing the effectiveness of security and public order protection results in the involvement of bodies operating in the field, those who carry out their tasks closest to the citizen. Among the competences of these, in turn, the establishment of order regulations is only one of many tools for the implementation of tasks assigned to these authorities by law. Nevertheless, this type of legislative activity is a very important research problem, mainly due to the potential effects that have a direct impact on the sensitive areas of citizens' existence, which in turn have been subject to special protection by the legislator. Above all, however, it is necessary to clarify the premises for establishing this form of local law and construct rules preventing the occurrence of potential conflicts between order regulations created at the level of municipalities and their counterparts, that is, acts issued by other administrative bodies authorized in this respect. The Polish case examined in the article reflects general trends. The effectiveness of the protection of public order depends upon the successful balancing of the powers and competences of the entities exercising this function. The performance of tasks assigned in this area requires efficient tools that enable a quick and effective response to sudden events that pose a threat to the values which are subject to special protection.

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Savivaldos privalomųjų potvarkių įtvirtinimas kaip vietos saugumo užtikrinimo elementas

Anotacija

Straipsnio tikslas yra išanalizuoti savivaldos privalomųjų potvarkių įtvirtinimo procesą Lenkijos savivaldybėse ir jų, kaip vietos saugumo užtikrinimo priemonės, vaidmenį. Straipsnyje atkreipiamas dėmesys į vietos saugumo esmę, išskiriami ir apibūdinami individualūs vietos valdžios institucijų vykdomi uždaviniai vietinio saugumo užtikrinimo srityje (kriazių valdymo srityje; užduotys, vykdomos kritinėse situacijose; užduotys, vykdomos vietos valdžios organų įprasto darbo eigoje). Atsižvelgiant į tai, buvo tiriama įstatyminė ir subjektyvi savivaldybių potvarkių nustatymo apimtis, šių nuostatų priėmimo priežastys ir jų priėmimo procesą įteisinantys principai. Siekiant padaryti išvadas, buvo peržiūrėti dabartiniai norminiai aktai ir literatūra šia tema. Tai leido atlikti kritinę analizę. Savo ruožtu surinktos tyrimų medžiagos apibendrinimas leido padaryti išvadas ir baigiamąsias pastabas.

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