

# Status of a Voivodship Governor as an Authority Responsible for the Matters of Security and Public Order

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## Abstract

*The purpose of the article is to present the legal status of a voivodship governor in Poland within the area of security and public order. The representative of the Council of Ministers in a voivodship performs a managerial and coordination functions in matters of security and public order, the aim of which is to meet the needs in this respect more effectively. The analysis of the legal situation in this respect leads to the conclusion that a voivodship governor as a local authority performs a wide range of responsibilities to protect security and ensure public order. The author of the article argues that a voivodship governor to carry out such tasks, the legislature has equipped this body with many powers, sometimes entailing sanctions for the entities to which these tasks are directed, and therefore they must be applied not only with caution, but above all within the limits of law to avoid any abuse in that field.*

**Keywords:** voivodship governor, security, public order

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Security and public order constitute an important task to be performed both by the central government administration, but also for local government. However, it should be stressed that such matters in the region are handled primarily by the voivodship governor as a representative of the Council of Ministers. This is related to the area administered by this body and thus the possibilities the individual local administration bodies have in this respect. Activities carried out regionally in the field of security and public order very often exceed the capabilities of the local self-government (including provincial self-government), while the voivodship governor, who may also use central governmental support, has been provided with adequate resources. As a rule, security and public order in the local space will be dealt with by the local self-government (commune and county), while in the regional space by the voivodship governor.

The article analyses the status of a voivodship governor in the area of security and public order, therefore these two terms need to be defined. It should be assumed that, as proposed by Karpiuk, security is the reduction of threats, predicting them, protecting against them as broadly as possible, including prevention, and taking effective actions aimed at removing their results. For national security, these include threats directed against the very institution of state to disrupt its normal functioning. On the other hand, public order refers to the maintenance of order in the state. This order has a public-law dimension, forming a system of bodies and institutions, as well as obligations to ensure stability, harmonization and coordination of actions aimed at neutralizing the threats.<sup>1</sup>

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1. See: Karpiuk (2017b, 11); regarding security, see: Czuryk, Drabik, Pieczywok (2018, 264–265), Karpiuk (2009, 389–390), Bożek, Karpiuk, Kostrubiec (2012, 12–13); as regards public order, see: Karpiuk and Szczęch (2017, 96–107), Czuryk (2017, 9), Pieczywok (2016, 9–10).

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The voivode's status of a security and public order authority entails, among other things, equipping them in appropriate powers, means and resources, including those allowing them to interfere in the sphere of human and civil freedoms and rights. However, an interference in the area of freedom and rights of an individual cannot be excessive, and must also have a clear legal basis. Protection of security and public order is an important task not only from the point of view of the regional community formed by inhabitants of the province, but also is important for public institutions located in the voivodship, or from the point of view of securing critical infrastructure. Security is one of the basic human needs, which should be met by both public and private entities, but also by the interested parties themselves, to the extent that those interested are able to meet it (Karpiuk 2018a, 67). Security is an extremely important institution both for the state as a public structure, as well as for society or individual members thereof, and therefore should be perceived as a sort of common good (Czuryk 2018, 15; Kostrubiec 2012, 83–84).

A voivodship governor, as a representative of the Council of Ministers, performs, among other things, the following functions:

- ensures cooperation of all central government and self-government administration bodies operating in the area of the voivodship, and manages their activities in terms of prevention of threats to life, health or property and threats to the environment, state security and maintaining public order, protection of civil rights as well as prevention of natural disasters and other emergencies, as well as combating and remedying consequences thereof,
- makes an assessment of the condition of the regional flood protection, and develops an operational plan for the flood protection and announces and cancels a state of emergency and flood alert, and
- performs and coordinates tasks in the field of national defense and security as well as crisis management.<sup>2</sup>

The legislature has made a voivodship governor an authority which manages public administration activities, within the region, aimed at protecting public security and maintaining public order. This also applies to local self-government. The very fact of managing such activities should be considered appropriate from the point of view of their effectiveness, nonetheless this is not entirely legally reasonable, as there is almost no legal legitimacy to manage local self-government activities in any scope, including in matters of public security and order. The constitutional legislature has introduced the principle of decentralization of public administration, the basic form of which is territorial self-government. This principle means that the territorial self-government is an independent structure, and therefore the bodies of central government administration may supervise it (by applying the criterion of legality) but not manage it. Territorial self-government pursues an independent policy regarding public security and order, and activities to implement the policy may be coordinated by the voivodship governor, if necessary. body of central government administration may not manage the activities of local self-government, even in such important matters as security and public order.

The legislature, in Article 25 CGAV has defined the voivodship governor's powers in terms of issuing instructions, including those regarding security and public order. A voivodship governor may issue instructions to all organs of central government administration operating in the region, and these instructions bind also local self-government authorities in emergency situations<sup>3</sup> that pose a threat of life, health or property, the environment, State security and maintenance of public order, protection of civil rights, and in the event of natural disasters and other extraordinary threats. The

2. See: Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 9 listopada 2017 r. w sprawie ogłoszenia jednolitego tekstu ustawy o wojewodzie i administracji rządowej w województwie [the Act of 2009.01.23 on the central government administration within a voivodship]. DzU z 2017 r. poz. 2234 as amended, (hereinafter: CGAV), Art. 22; see also: Karpiuk (Karpiuk 2013c, 133). A voivodship governor has also the jurisdiction in terms of health safety; for more on the topic, see: Karpiuk and Kostrubiec (2018, 65–75).

3. An emergency situation is also a crisis situation which, according to the legal definition, is a situation which negatively affects the level of security of people, property in significant amount or the natural environment, by causing considerable restrictions on the functioning of the competent public administration bodies due to the inadequacy of means and resources held, see: Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 6 lipca 2018 r. w sprawie ogłoszenia jednolitego tekstu ustawy o zarządzaniu kryzysowym [the Act of 2007.04.06 on crisis management]. DzU z 2018 r. poz. 1401 as amended (hereinafter: ACM), Art. 3(1).

voivodship governor must immediately notify the competent minister of the instructions issued. However, these instructions may not concern decisions on the merits in a case to be concluded with an administrative decision and may not involve operational, investigation and prosecution activities. The competent minister may suspend the execution of such voivodship governor's instructions directed to bodies of non-combined central government administration and request the President of the Council of Ministers to settle the dispute, while presenting a position on the case. Even an emergency situation does not justify the issuing of voivodship governor's instructions directed to territorial self-government authorities. The instructions are a form used within structures with hierarchical subordination. Territorial self-government authorities are not subordinated to the voivodship governor.

The securing of protection of security and order is the precondition for the voivodship governor to issue public order regulations. According to Article 60 CGAV, to the extent not regulated by the generally applicable law, the voivodship governor may issue public order regulations, insofar as this is necessary for the protection of life, health or property and to ensure order, public peace and security. Such acts of local law must be immediately forwarded to the President of the Council of Ministers, the Marshal of the voivodship, county governors (starosts) and mayors of cities, towns and rural communes, on whose area of responsibility the regulation is supposed to apply.<sup>4</sup> A public order regulation may be issued by the voivodship governor if the following conditions are met: the matter is not regulated in generally applicable law; it serves the protection of the goods referred to in Article 60 (1) CGAV (life, health, property, public order, public peace, public security); there is no other way of protecting these goods. Due to the degree of interference it is reasonable to inform the widest possible group of inhabitants of the region and those staying on the territory of the region who may be affected by these provisions. This is done by the immediate delivery of a public order regulation to the Marshal of the Voivodship, the county governors (starosts) and mayors of cities, towns and rural communes, on whose area of responsibility the regulation is supposed to apply. The purpose of notifying the President of the Council of Ministers of the public order regulation laid down is to initiate a possible supervisory procedure and to repeal the ordinance if relevant reasons arise.

Due to the scope of impact of public order regulations on their addressees, they must be enacted only in order to protect a qualified interest, and their degree of sanction should be determined by the fact that such norms should only be applied as a means of last resort, if other legal means are not able to adequately secure a specific good (Karpiuk 2015c, 21).

Security is also an important element of crisis management. Crisis management is defined in Article 2 of the Act on crisis management as an activity of public administration bodies forming an element of managing national security, involving the prevention of crisis situations, preparation to take control over them through planned actions, response in case of crisis situations, remedying their effects, as well as restoring critical resources and infrastructure. In the sphere of crisis management so defined, there is also a voivodship governor acting as a public administration body at the regional level. The responsibilities of a voivodship governor in matters of crisis management are specified in Article 14(2) of the Act on crisis management, including:

- managing the monitoring, planning, responding and eliminating the effects of threats in the voivodship;
- implementation of tasks in the field of civil planning, including:
  - providing to starosts recommendations concerning district crisis management plans,
  - approving district crisis management plans,
  - preparing the regional crisis management plan and submitting for approval to the minister competent for public administration, and
  - implementing guidelines for regional crisis management plans;
- managing, organizing and conducting training, exercises and drills in crisis management;
- applying for the use of units of the Armed Forces of the Republic of Poland to perform tasks within the crisis management;<sup>5</sup>

4. Regarding public order regulations, see: Karpiuk (2013a, 120–121), Karpiuk and Kostrubiec (2017, 97), Czuryk (2009a, 130), Walczuk in (Czuryk, Karpiuk, and Mazuryk 2012, 161–166), Karpiuk (2014a, 50).

5. The responsibilities in the field of crisis management assumed by the Polish Armed Forces, according to Art.

- implementation of projects resulting from planning documents as part of regional operational planning;
- prevention, counteraction and elimination of effects of terrorist events;
- cooperation with the Head of the Internal Security Agency in terms of prevention, counteraction and elimination of effects of terrorist events; and
- organization of the performance of tasks in critical infrastructure protection (Czuryk et al. 2016b, 66).

The whole spectrum of tasks of a voivodship governor in the sphere of crisis management concerns prevention, taking ad hoc activities, as well as follow-up actions. In view of the above, a voivodship governor will be competent for the prevention, counteraction and remedying the results of threats (Karpiuk 2014b, 77).

The extent of crisis management tasks assigned by the legislature to a voivodship governor demonstrates his important position he holds in security matters at the regional level, actually influencing the shape of the policy in this area implemented by public administration in the voivodship. The crisis management tasks are performed by the voivodship governor in cooperation with relevant public administration bodies (both central-government and self-government) and with the help of an organizational unit competent for crisis management in the voivodship office, the voivodship crisis management team and the voivodship crisis management center. Therefore, the voivodship governor's auxiliary staff is extensive, and due to the need for harmonization of tasks in this area, the legislature introduces the institution of cooperation with public administration, taking place at the regional level.

During a state of natural disaster, the voivodship governor also undertakes statutory actions to ensure safety in the area for which the state was declared. The activities carried out to prevent or remedy the consequences of a natural disaster are managed by a representative of the Council of Ministers, if the state of natural disaster is declared for an area of more than one district (county) belonging to the province (voivodship).<sup>6</sup> The voivodship self-government was excluded from the process of management in this respect (Czuryk 2009b, 407; likewise: Karpiuk 2017c, 99).

As regards the management of activities carried out in order to prevent the effects of a natural disaster, or their remedying, on the territory of the voivodship, a voivodship governor is subordinated to the bodies and organizational units of government administration and voivodship self-government operating on the territory of the region and other means and resources assigned for his disposal and directed to perform these activities on the territory of the voivodship, including units of the Armed Forces of the Republic of Poland. This competence results from Article 11 (2) ASND (see also: Czuryk et al. 2016a, 216). Subordination of territorial self-government bodies and units operating on the territory of the voivodship to the voivodship governor goes beyond the constitutional principle of decentralization, which guarantees the structures of territorial self-government autonomy protected by courts. Security issues arising out of a natural disaster do not justify compromising the constitutional principles of the political system — including the principle of decentralization of public administration, therefore, the issue of subordination of local government to a voivodship governor set out in this provision should be considered defective.

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25 (3) of the Act on crisis management include: (1) cooperation in risk monitoring, (2) performing tasks related to the assessment of the effects of phenomena taking place in the area of occurrence of threats, (3) performing search and rescue tasks, (4) evacuating the injured population and property, (5) performing tasks to prepare conditions for temporary accommodation for the evacuated population in designated places, (6) cooperation in the protection of property left in the area where threats operate, (7) isolating the area of occurrence of treats or place of rescue operation, (8) performing security, rescue and evacuation works at endangered construction sites and historical monument sites, (9) carrying out works that require the use of specialised technical equipment or explosives held by the Armed Forces of the Republic of Poland, (10) removal and disposal of hazardous materials using the means and resources held by the Armed Forces of the Republic of Poland, (11) elimination of chemical and biological contamination and infections, (12) removal of radioactive contamination, (13) performing tasks related to the repair and reconstruction of technical infrastructure, (14) cooperation in ensuring the possibility of transportation routes, and (15) providing medical assistance and performing sanitary and epidemic prevention tasks.

6. See: Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 15 września 2017 r. w sprawie ogłoszenia jednolitego tekstu ustawy o stanie klęski żywiołowej [the Act of 2002.04.18 on the state of natural disaster]. DzU z 2017 r. poz. 1897 as amended (hereinafter: ASND), Art. 8(3); see also: Karpiuk (2014c, 54).

Restrictions on individual freedoms and rights may be introduced during the state of a natural disaster in respect of preventing or remedying the effects of the disaster. The necessary statutory restrictions on human and civil freedoms and rights, within the limits specified in the Ordinance of the Council of Ministers on the state of natural disaster, are introduced, by virtue of Article 23 ASND, respectively within the scope of his jurisdiction, by the voivodeship governor in the form of an ordinance or decision. Voivodeship governor's ordinances are to be announced by posting paper notices in public places or otherwise locally accepted, as well as by an announcement in the local press. The ordinance or decision should state: (1) the legal basis, (2) the scope and type of restrictions, (3) the identification of obliged entities, (4) the place, date and time of the personal appearance or fulfilment of other restrictions, (5) duration of the restrictions, and (6) and an instruction on the criminal liability or other legal consequences of an infringement of the ordinance or decision in question.

Such restrictions must correspond to the constitutional conditions allowing for their introduction. The constitutional legislature provides for that Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.<sup>7</sup>

When securing the sphere of human freedom, the Constitution of the Republic of Poland states that limitations on the use of constitutional rights and freedoms “may be imposed only by statute.” Therefore, they can only be imposed by a representative body composed as a result of general elections. Only the Sejm and the Senate may impose such restrictions, giving them the form of a statute, and therefore a legal act of the Parliament adopted in a particular procedure and occupying a high place (immediately after the Constitution of the Republic of Poland) in the system of sources of law commonly applied in the State. This sphere cannot be interfered by bodies of the executive power (public administration) acting as legislators, which is often quite common in totalitarian states. In addition to the objection concerning the right to interfere in the sphere of freedom and rights of an individual, the Polish Constitution also introduces further restrictions. Limitations on the exercise of rights and freedoms may be imposed only if they are necessary in a democratic country to: (1) ensure its security or public order, (2) protect the environment, health and public morality, and (3) protect the freedoms and rights of others. The general principle in this field, expressly put by the Polish Constitution, is that these limitations must not affect the essence of human and civil freedoms and rights. The legislature, when establishing this important principle concerning freedoms and rights, has also defined their guarantees and limits, as well as the conditions for applying the limitations necessary in this respect (see: Skrzydło 2013).<sup>8</sup>

During a state of emergency, activities to restore the constitutional system, security of citizens or public order, and in particular coordination and control over the functioning of central and local government administration, if this state is declared for the area or part of the area of one voivodeship, are to be performed by the competent voivodeship governor.<sup>9</sup> A state of emergency is introduced to protect public safety and order if qualified threats arise.

During a martial law, the voivodeship governor manages the implementation of defensive tasks and civil defense in the region. Specifically, this body:

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7. See: Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. uchwalona przez Zgromadzenie Narodowe w dniu 2 kwietnia 1997 r., przyjęta przez Naród w referendum konstytucyjnym w dniu 25 maja 1997 r., podpisana przez Prezydenta Rzeczypospolitej Polskiej w dniu 16 lipca 1997 r. [the Constitution of the Republic of Poland of 1997.04.02]. DzU z 1997 r. nr 78 poz. 483 as amended, (hereinafter the Constitution of the Republic of Poland), Art. 31(3); see also: Karpiuk, Prokop and Sobczyk (2017, 23–25), Walczuk in (Karpiuk and Sobczyk 2018, 81–112).

8. Art. 31(3), first sentence, of the Constitution of the Republic of Poland puts particular emphasis on the criterion of necessity in a democratic state. This means that any limitation of individual rights and freedoms must be assessed first of all whether it was necessary, and therefore, whether the same effect could have been achieved by other means, less burdensome to citizens, less interfering in the sphere of their rights and freedoms. The second sentence of the cited provision strictly prohibits entering into the essence of the guaranteed right.

9. See: Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 28 września 2017 r. w sprawie ogłoszenia jednolitego tekstu ustawy o stanie wyjątkowym [the Act of 2002.06.21 on State of Emergency]. DzU z 2017 r. poz. 1928, Art. 9; see also: Karpiuk (2015a, 36).

- assesses threats,
- imposes restrictions on human and civil freedoms and rights, and mitigates and repeals these restrictions, to the extent that it does not belong to the public,
- requests the competent authorities to impose restrictions on human and civil freedoms and rights, and their mitigation or repeal,
- defines tasks resulting from martial law legislation,
- coordinates and controls the activities of public authorities, businesses and other organizational units operating in the area of the voivodship, and
- may assign tasks and instruct individual territorial self-government units to make certain expenditures.

Within the scope of the above-mentioned activities, the voivodship governor is superior to all organizational units of central government and self-government administration operating in the area of the voivodship and other means and resources allocated to him and assigned to perform tasks related to the defense of the state and the voivodship, as well as those related to civil defense.<sup>10</sup>

As part of the implementation of tasks in the field of central government administration within the voivodship, a voivodship governor is both the executor and the initiator of the security policy. This policy is carried out at all levels of management, both in the area of responsibility and across the entire country. The voivodship governor's jurisdiction, including in matters of security, extends to the area of the voivodship, thus the national territorial division unit of relatively large scope and importance, and therefore its activity will be extremely important from the point of view of preventing and combating threats in the region (Karpiuk 2018b, 227).

The security system should be designed to ensure the proper functioning of the democratic state governed by the rule of law not only in the absence of a threat, but also in the state of crisis and war. The legal regulations applicable in this regard should be clear and precise. The responsibilities of various bodies involved in the implementation of the tasks aimed at ensuring the proper functioning of the State should be designed so as in an emergency situation there is no doubt about the scope of responsibility of each of them. The tasks must be defined specifically and cannot be duplicated, nor can there be loopholes in this respect (Czuryk 2013, 69). Regardless of the tier of management in the field, tasks regarding security are to be carried out continuously (Karpiuk 2017a, 10). This applies to both the administration in the field and central administration. In the case of a voivodship governor as an authority over security and public order matters, his role in this area is not quite clear. The responsibilities and powers are structured in a number of cases in an unclear, legally doubtful manner. In such an important area as the sphere of security and public order, where an interference with the sphere of freedom and rights of the individual often takes place, there must be no room for action based on a vague legal basis, and even more there is no room for the presumption of powers, which is even inadmissible due to the principle of legality. In view of the above, it seems necessary to review the voivodship governor's responsibilities and powers in the field of security and public order, to identify them, systematize, harmonize and to analyze it in terms of their compliance with the Constitution of the Republic of Poland.

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10. See: Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 28 września 2017 r. w sprawie ogłoszenia jednolitego tekstu ustawy o stanie wojennym oraz o kompetencjach Naczelnego Dowódcy Sił Zbrojnych i zasadach jego podległości konstytucyjnym organom Rzeczypospolitej Polskiej [the Act of 2002.08.29 on Martial Law and the Competences of the Commander-in-Chief of the Armed Forces and the Rules of his Subordination to the Constitutional Authorities of the Republic of Poland]. DzU z 2017 r. poz. 1932 as amended, Art. 13; see also: Karpiuk (Karpiuk 2013b, 203–204; 2015b, 6).

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