

Legal Status of the Voivodship Marshal in the Light of Its Functions

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Abstract

The legal status of the voivodship marshal is determined by a number of conditions. The most important are functions and powers vested in this authority under the Act on the voivodship government, other laws and provisions of secondary legislation. The analysis of these regulations determines the strong legal position of the voivodship marshal, which allow for including this authority in the category of local government bodies, even though the Constitution and the Act on the voivodship government mention only the voivodship assembly and the voivodship board as local government authorities. The independent, managerial powers in the voivodship board, and in particular the right to issue administrative decisions in individual cases, frame this institution as a monocratic authority. This conclusion allows putting forward a proposal concerning direct election of this authority by the inhabitants of the voivodship.

Keywords: the voivodship marshal, body of local government, functions of the voivodship government, voivodship government, voivodship board, managerial function

JEL: H83, K23

The formation of local government at the regional (voivodship) level has resulted in extremely important challenges faced by this unit. The regional government did not merely followed the model of the commune (Polish: gmina) or powiat district (Polish: powiat) at the highest level of territorial division, but also was supposed to become the basis of regionalization of the state, especially during the period when Poland was striving for the membership in the European Union. The clear separation of local and regional self-governing units is provided for in Article 164 (2) of the Polish Constitution. The main task of local government units is to provide public services directly to individual members of the community. The duty of the regional government is to take action for the broadly understood general civilizational, economic and social development of the region (Jankowski 2013, 7–8; Malinowski 2006, 194).

According to the constitutional principle of division of tasks of local government (Article 166 (1) and (2) of the Constitution), the voivodship government shall pursue its own tasks and delegated tasks. Own tasks are to satisfy the needs of the local community. Delegated tasks are to be performed by the voivodship government if this is justified by the state's legitimate needs, under statutory basis. As rightly pointed out in the literature, own tasks of the voivodship government arise directly from the principle of decentralization. On the other hand, delegated tasks are merely a manifestation of devolution of state tasks. These are also differentiated by the way they are financed. Own tasks are financed from own funds. The funds for the fulfilment of the tasks delegated to the regional government are assigned from the State budget (Kliś 2015, 260).

The legal position of the voivodship marshal depends precisely on the type of tasks pursued by the regional government. It should be noted that the Constitution and statutes did not shape the institution of the voivodship marshal as a regional government body of its own kind. According to

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the constitutional classification, the local government bodies in all the levels of local government are the legislative and executive bodies (Article 169 of the Constitution). In accordance with this systemic division, the Act on the voivodship government (hereinafter: AVG) establishes only one legislative body: the voivodship assembly, and only one executive body: the board of the voivodship. The division of the voivodship bodies is closely related to the scope of tasks assigned to the regional government. In this respect, it should be mentioned that, while the Act on municipal government and the Act on poviát government adopted as a principle the presumption of general competence of legislative bodies for the implementation of tasks entrusted to those governments, the Act on the voivodship government granted the general competence of the voivodship board in the area of own tasks, leaving to the voivodship assembly as a legislative body only those tasks which are expressly set out in the law. Furthermore, pursuant to Article 14 (2) of the Act on the voivodship government, the voivodship board has become the only authority competent for the implementation of delegated tasks by the regional government (Dolnicki 2012, 153; Kliś 2015, 261).

In view of this constitutional and statutory division of tasks and assignment thereof to the legislative and executive bodies of the voivodship, the position of the voivodship marshal is ambiguous. Although the Act does not list it as a body of local government, a number of conferred powers and tasks makes the voivodship marshal an independent body, in particular because of the external functions attributed to him apart from the position of chairman of the voivodship board (Jagoda and Jerominek 2007, 203).

The tasks and powers of the voivodship marshal include the following:

- performing tasks of representation of the voivodship (Article 43 (1) of the Act on the voivodship government)
- managing everyday affairs of the voivodship (Article 43 (1) of the Act on the voivodship government)
- managing and chairing the works of the voivodship board and managing the marshal's office (Article 43 (1) of the Act on the voivodship government)
- exercising organizational and official supervision over employees of the office and heads of the local government organizational units (Article 43 (3) of the Act on the voivodship government)
- undertaking activities for the voivodship board in crisis situations (Article 43 (2) of the Act on the voivodship government)
- handling individual cases and issuing decisions within the scope of public administration (Article 46 (1) of the Act on the voivodship government)
- making statements of will in the form of joint representation on behalf of the voivodship (Article 57 (2) of the Act on the voivodship government) (Dolnicki 2012, 440; Ura 2014, 20–21)

The above-mentioned powers of the voivodship marshal clearly points to his strong legal position in the bodies, structure and tasks of the entire voivodship. To verify this thesis, it is necessary to analyze particular groups of tasks and powers of the voivodship marshal.

Concerning representation of the voivodship, the Act in Article 43 (1) provides for an exception to the general rule expressed in Article 31 of the Act regarding the representation of the voivodship by such local government bodies as the voivodship assembly and the voivodship board. Granting the marshal the powers of active and passive representation of the voivodship is usually explained by practical reasons due to the collegial (five-member) composition of the voivodship board. In a way, he is a representative of the board with all the attributes resulting from the principles of representation laid down in the Civil Code (Dolnicki 2012, 443; Szewc 2008, 387). His statements of will made individually, are valid in every case and in every legal relationship although the voivodship marshal is not a local government body listed in the Act.

However, when enacting this provision, the legislature was not definitely consistent. This is evidenced by the content of Article 57 of the Act on the voivodship government, which provides for the joint representation of the voivodship government as regards statements of will being submitted, i.e. the marshal and the second member of the voivodship board.¹

1. As pointed out by the Administrative Court, Article 48 (1) of the Act on the poviát government states that statements of will on property matters on behalf of the poviát consists shall must be made by two members of the poviát board or one board member and a person authorised by the board. This provision introduces an exception to

In view of the content of both provisions and the internal structure of the Act (Article 57 is situated in the chapter on property of the voivodship government), it can be inferred that the intention of the legislature was to establish a joint representation for civil-law affairs and property management.² However, the representation under Article 43 (1) should be implemented in public-law affairs (Chmielnicki 1999, 43; Dolnicki 2012, 442).

It must be especially noted that the marshal has the right to represent the voivodship in procedures before all the state authorities, to which the voivodship is a party (Ura 2014, 20–21). Therefore, he has the right to grant effective powers of attorney to the attorneys in these proceedings.

The strong organic position of the marshal was clearly outlined in terms of handling the everyday affairs of the voivodship. It is his responsibility to exercise all forms of management, namely preparing, planning, arranging, conducting, monitoring and controlling, but only concerning ongoing matters. The legislature has not consistently approached the implementation of this function in relation to the general principle of entrusting the managing of voivodship matters to the executive body (i.e., the voivodship board). Although the Act uses the expression “everyday affairs” (Polish: *sprawy bieżące*), it can be interpreted either broadly or narrowly, since there is no legal definition of that concept. The literature stresses that “the criterion for the classification of the matter to the category of everyday affairs is not only its on-going nature, the necessity to settle it within a given time, but rather a routine nature, high incidence or minor importance” (Dolnicki 2012, 444; Szewc 2008, 386). Although, as a rule, the direct management of the voivodship affairs in everyday matters by the voivodship marshal should boil down to activities of an internal and organizational nature, it is not possible to find a precise and clear-cut criterion in this respect and in practice it may often depend on the political position and personality of the person who exercises this function. The legislature only outlines certain limits on the exercise of those powers. The voivodship marshal may not, in matters of everyday affairs, issue public order provisions because the voivodship board has no power to issue public order provisions (unlike in the commune and powiat). On the other hand, the marshal’s activities taken as part everyday affairs do not require the subsequent ratification by the voivodship board (Ura 2014, 21). As a result, the dualism of managing the affairs of the voivodship by the board and by the marshal acting as a managing body is clearly visible. A similar power in this respect is also held by the powiat starosta.

Therefore, one should agree that “the above regulations clearly point to the special legal position of the chairman of the powiat’s board (i.e., the starosta), and the chairman of the voivodship board (i.e., the voivodship marshal). Of the members of these collegial bodies, whose position in the board is equal only to the extent to which they take collegial decisions, it is the starosta and marshal who were granted special executive powers, unrelated only to the activities of organizing the work of the board. Neither the starosta nor the voivodship marshal have been named bodies of a local government unit. Although they are not bodies of specific local government units, they exercise important, independent executive functions in these units” (Ura 2014, 21).

As regards the management and chairmanship of the voivodship board and the management of the marshal’s office, the voivodship marshal’s function of single-handed management has been strongly emphasized. As in the case of the on-going management of the voivodship’s affairs, the organization of the work of the board and the marshal’s office covers all forms of managing these institutions. Therefore, the voivodship marshal is responsible for planning, organizing, leading, deciding, inspiring and controlling these bodies. Although he is formally one of the five members of the collegial voivodship board as an executive body, he is not just the “first among equals.” The legislature has assigned to him a managerial (organizational) position in the voivodship board.

the principle expressed in Article 26 (1) of the Act on the powiat government, according to which the powiat board in corpore is the powiat’s executive body, as well as the principle expressed in Article 34(1) of the Act on the powiat government, according to which the starosta (powiat head) represents the powiat outside. The judgment of the Regional Administrative Court in Warsaw of 2007.04.12, VIII SA/Wa 192/07, Lex no. 461369.

2. This is confirmed in § 75 of the Charter of the Lubelskie Voivodship (Statut Województwa Lubelskiego), placed under the title “Representation of the voivodship in property-related matters.” Statut Województwa Lubelskiego (Charter of the Lubelskie Voivodship) Announcement posted on the Lubelskie Voivodship’s BIP website.

The voivodship marshal's powers to organize the work of the voivodship board were detailed and developed in charters of voivodships and organizational regulations of marshal's offices. For example, in the Charter of the Lubelskie Voivodship, the following has been stated:

- the right of the marshal to convene board meetings—single-handedly or at the request of a member of the board—§ 71²⁷)
- the right to determine the scope of duties of board members—§ 69(5)
- the right of the marshal to invite other persons from outside the board to the meeting—§ 71a²⁸
- the right to open, moderate, close and chair the debates of the voivodship board—§ 72³³ (2)
- drawing up of the draft agenda of the board's meeting—§ 72³³ (3)
- ensuring that the minutes of the meeting are properly drafted—§ 72b³⁵
- the right to consent to the absence of a member of the board in particularly justified cases—§ 73³⁷(3)

On the other hand, the powers of the voivodship marshal resulting from the organizational and official authority over the employees of the office and heads of organizational units are addressed in particular in the Organizational Regulations of the Marshal's Office of the Lubelskie Voivodship. The marshal:

- manages the office personally with the assistance of other members of the Board, the Secretary, the Treasurer and heads of departments,
- exercises substantive supervision over the work of subordinate organizational units of the Office,
- coordinates the activities of organizational units of the office,
- grants authorizations to members of the Board and employees of the Office to issue decisions in individual matters of public administration on behalf of the marshal,
- exercises the function of the manager of the workplace,
- exercises the function of the official superior over the heads of organizational units,
- resolves conflicts of competence between the Office's organizational units, and
- supervises the correct use of the budget by subordinate organizational units of the Office.⁴

The principle of integration of the voivodship government administration into one office under one authority, adopted in Article 3 of the Act on the voivodship government, generates an extremely strong legal position of the marshal, who is the official superior of all the staff of the office and the superior of heads of local government entities. Owing to this, the voivodship marshal has the power to undertake a number of internal managerial activities in the area of labor law, personal policy, issuing acts of internal management in the form of orders, as well as granting powers of attorney, authorizations and instructions. The organizational and official authority gives the marshal the right to perform a number of inspection activities and procedures with respect to employees of the office and heads of organizational units.

As already mentioned, an important instrument in this respect is the organizational regulations of each Marshal's Office. The organizational regulations are not laid down by a marshal's order, but it has the form of a resolution of the voivodship board. However, since the marshal, as indicated above, has a fundamental effect on the work of the voivodship board chaired by him, and on the substantive and legislative drafting of resolutions and documents, it can be argued that the marshal has a decisive influence on the content and form of the organizational regulations, as well as its performance through the regulatory references to detailed orders of the marshal related to the management of the office.

The legislative powers of the voivodship marshal in the field of internal management acts made in the form of orders include the labor regulations and remuneration regulations (Dolnicki 2012, 447; Szewc 2008, 396–397). In addition, the voivodship marshal as the sole right-holder is entitled under Article 7 (3) of the Act on local government personnel to carry out activities in the field of labor law, executes all individual acts of will in relation to the employees of the marshal's office and heads of organizational units, but he appointment and dismissal of the heads of the units is done under resolution of the voivodship board.⁵

3. Charter of the Lubelskie Voivodship, the Lubelskie Voivodship's BIP website.

4. Provisions of § 6 and § 7 of the Organisational Regulations of the Marshal's Office of the Lubelskie Voivodship, the Lubelskie Voivodship's BIP website.

5. See: Judgement of the Supreme Administrative Court of 2008.11.18, I OSK 1536/07, Lex no. 526547; (Dolnicki

The voivodship marshal, under Article 43 (2) of the Act on the voivodship government, has gained extensive single-person powers to take action in crisis situations. In those situations, neither he has the right to issue public order provisions the issuance of which are the responsibility of the voivode nor other local legislation, since the statute authorizes such acts to be adopted only by the legislative body (i.e., the voivodship assembly). However, the provision under which the marshal takes action allows him to effectively undertake a variety of factual and legal actions of a sovereign and non-sovereign nature (Agopszowicz and Gilowska 1997, 244; Dolnicki 2012, 450). The legislature described the circumstances fairly precisely as conditions for the implementation of such actions. These are: direct threat to public interest, direct threat to health and life, and the risk of substantial material losses.

In these situations, the voivodship marshal does not have any own powers but when counter-acting crisis events, acts “for the voivodship board,” exercising the responsibilities and powers conferred on the board. This is confirmed by the second sentence of Article 43 (2) of the Act on the voivodship government that obliges the marshal to submit and obtain a board’s approval at the next meeting of the board for the actions taken. As the legislature failed to specify in detail the procedure for presenting, checking and approving those actions, it must be held that this allows the marshal for a broad interpretation of his powers in those situations.⁶

The strong legal position of the voivodship marshal is also confirmed by the right established under Article 46 (1) of the Act on the voivodship government to issue public administration decisions in individual cases. This is a power so important that it speaks for giving the voivodship marshal the status of administrative body, although, as has already been stated, the Act on the voivodship government does not mention it as a local government authority (see: Dolnicki 2012, 153; Kliś 2015, 261).

The marshal may issue individual administrative decisions in terms of own tasks of the voivodship government and delegated tasks. The proceedings carried out by the voivodship marshal are to be carried out under general rules of the Code of Administrative Procedure, based on substantive statutes allowing for the determination of parties’ rights and obligations. Proceedings may be carried out upon request or *ex officio*. The form of resolution of the case is an administrative decision. The appellate body to appeal from the decision of the voivodship marshal is the local government appeal council and, in matters conferred under the agreement with the voivode, the relevant minister.

The voivodship marshal may transfer the right to issue administrative decisions in individual cases, by way of an authorization, to the other members of the voivodship board, members of the staff of the marshal’s office and heads of voivodship government organizational units. Thus, only him has the right to devolve the powers conferred on him in that regard. By authorizing particular groups of employees to issue decisions, he does not give up this power itself and any case he may reserve it again for his personal decision (Dolnicki 2012, 461–463; Szewc 2008, 404–405; Ura 2014, 22–23). The voivodship marshal’s role is not limited to the issuing of individual administrative decisions. Also in the case of an administrative decision issued by the voivodship board, such decision must be signed by the marshal.

Such a broad catalogue of functions, especially external, conferred on the marshal by the Act on the voivodship government leads to the discovery of analogies between the current statutory regulation of the position of the voivodship board and the voivodship marshal and the model of the organization and functioning of the executive body in the commune (municipality) during the interwar period,⁷ as this statutory regulation *expressis verbis* established a collegial or single-person board (Dolnicki 2012, 440; Olejniczak-Szałowska 2014, 52).

2012, 447; Ura 2014, 24).

6. Crisis situations may, in particular, concern ensuring the security of people and property, including especially security of the personnel of the marshal’s office and the personnel of voivodship’s organisational units. These are the most manifest urgent situations that need undertaking necessary measures by the marshal for the voivodship board. Cf. more in: (Polak 2015).

7. Pursuant to the Act of 1933.03.23 on the partial modification of the local government system (see: Ustawa z dnia 23 marca 1933 r. o częściowej zmianie ustroju samorządu terytorjalnego. DzU z 1933 r. nr 35 poz. 294).

At the same time, the critical stance towards conferring the attribute of a *sui generis* local government body on the voivodship marshal is noticeable, mainly as regards the claims that the provisions of the Act on the voivodship government are contrary to the Constitution in this respect. The Act on the voivodship government, by conferring on the marshal the right to issue individual decisions in the field of public administration, equipped him with the right to carry out a number of own and delegated tasks, which right was granted by Article 169 (1) of the Constitution to legislative and executive bodies of local government, and as a result of statutory regulations only to the voivodship assembly and voivodship board (cf. Kliś 2015, 261–262).⁸

Giving the voivodship marshal the attribute of a separate body by equipping him with a number of personal internal and external functions makes it possible to discuss the proposal to give him an unambiguous statutory character of a monocratic body of the voivodship government and to establish direct election of this body similarly to executive bodies at the commune level. This postulate is being proposed by both the theoreticians (Kulesza 2008, 300) and practitioners of local government affairs.⁹ The monocratic nature of the executive body does not, by its very nature, determine the rules and procedure of its election, but one should agree with the view that a monocratic body, more than a collegial one, is predestined to be legitimized by direct elections. Such a solution was adopted by the legislature at the commune level, which contributes to the strengthening of the members of a local government community and the very idea of direct democracy. A body elected by direct universal suffrage has a strong democratic legitimacy to act for the entire term. As a result, the relations between the legislative and executive bodies are subject to a fundamental change, as each of them has equally strong democratic legitimacy. The legislative body cannot dismiss the executive body in the event of a conflict; it can only initiate a referendum on the dismissal. The conflict is then resolved by the inhabitants themselves. The position of the executive body is strong and relatively stable. The position of the representative body, the voivodship assembly, is weakened in favor of the institution of direct democracy (Olejniczak-Szałowska 2014, 50).

This proposal, of course, needs further analysis and discussion. Nonetheless, in my opinion, it is worth considering.

References

- AGOPSZOWICZ, A., and Z. GIŁOWSKA. 1997. *Ustawa o samorządzie terytorialnym. Komentarz*. Edited by A. Agopszowicz. Krótkie Komentarze Becka. Warszawa: C. H. Beck.
- BOĆ, J. 2001. "Powiat a reszta państwa." In *Powiat. Z teorii, kompetencje, komentarz*, edited by J. Boć. Wrocław: "Kolonial Limited."
- CHMIELNICKI, P. 1999. "Zasady reprezentacji jednostek samorządu terytorialnego w obrocie cywilnym." *Samorząd Terytorialny* (12): 43–48.
- DOLNICKI, B. ed. 2012. *Ustawa o samorządzie województwa. Komentarz* (stan prawny na 1 lipca 2012 r.). Praktyczne Komentarze Lex. Warszawa: Wolters Kluwer Polska.
- JAGODA, J., and M. JEROMINEK. 2007. "Pojęcie organu w prawie samorządowym." In *Koncepcja systemu prawa administracyjnego. Zjazd Katedr Prawa Administracyjnego i Postępowania Administracyjnego, Zakopane 24–27 września 2006 r.*, edited by J. Zimmermann, 195–206. Warszawa: Wolters Kluwer Polska.
- JANKOWSKI, P. 2013. *Województwo jako region europejski*. Regiony. Toruń: Wydawnictwo Adam Marszałek.
- KLIŚ, K. 2015. "Marszałek województwa jako organ samorządu województwa?" In *Ustrój samorządu terytorialnego*, edited by B.M. Ćwierniak, 259–266. Sosnowiec: Oficyna Wydawnicza "Humanitas."
- KULESZA, M. 2008. *Budowanie samorządu. Wybór tekstów ze "Wspólnoty" 1990–2007*. Warszawa: Municipium.

8. A similar view was expressed by Boć (2001, 23–24) in relation to the analogous legal structure of the starosta as an executive body of the powiat. Lemańska (2014, 205) argues that due to fact that the attribute of an executive body of local government has been constitutionally and statutorily given only to the voivodship board, the voivodship marshal should be considered an "administrative body."

9. Position put forward by the XXXI General Assembly of the Union of Voivodships of the Republic of Poland of 2015.09.11.

- LEMAŃSKA, J. 2014. "Adekwatność prawnej regulacji pozycji zarządu województwa w odniesieniu do podstawowego zadania samorządu — rozwoju regionalnego." In *Pozycja ustrojowa organów wykonawczych jednostek samorządu terytorialnego*, edited by K. Małysa-Sulińska and M. Stec. Warszawa: Wolters Kluwer.
- MALINOWSKI, P. 2006. "Rola samorządu jako gospodarza regionu w jego rozwoju społeczno-gospodarczym." *Opolskie Studia Administracyjno-Prawne* 3: 193–201.
- OLEJNICZAK-SZAŁOWSKA, E. 2014. "Problematyka determinantów wyboru monokratycznego lub kolegialnego modelu organu wykonawczego na poszczególnych szczeblach jednostek samorządu terytorialnego." In *Pozycja ustrojowa organów wykonawczych jednostek samorządu terytorialnego*, edited by K. Małysa-Sulińska and M. Stec. Warszawa: Wolters Kluwer.
- POLAK, R. 2015. "Zadania marszałka województwa w obszarze zarządzania kryzysowego." In *Efektywność zarządzania zasobami organizacyjnymi*, edited by P. Lenik, 193–206. Krosno: PWSZ im. Stanisława Pigoń w Krośnie.
- SZEWIC, A. 2008. *Ustawa o samorządzie województwa* (stan prawny na 17 kwietnia 2008 r.). Komentarz. Warszawa: Wolters Kluwer Polska.
- URA, E. 2014. "Wójt, zarząd powiatu i zarząd województwa jako organy wykonawcze jednostek samorządu terytorialnego — porównanie ich statusu prawnego." In *Pozycja ustrojowa organów wykonawczych jednostek samorządu terytorialnego*, edited by K. Małysa-Sulińska and M. Stec. Warszawa: Wolters Kluwer.