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The Placement of Units or Divisions of the Polish Armed Forces at the Disposal of Province Governors

Abstract

A Province Governor is responsible for implementing the Council of Ministers' policies in the Province area. Such policies also include security affairs. Province Governors do not always have sufficient forces and resources to counteract threats. If a given threat is significant, or is related to the state of epidemic emergency, the state of the epidemic, the state of natural disaster or a crisis, units and divisions of the Polish Armed Forces may be placed at the disposal of a Province Governor. Their deployment is admissible if other forces and resources have failed to neutralise the threat or its outcomes or have proven insufficient. Although such units and divisions are placed at the disposal of a Province Governor, they are still under the command of their official superiors.

Keywords: Province Governor, Polish Armed Forces, crisis management, state of natural disaster, state of the epidemic.

Introduction

As regards defence, security and public order, Province Governors have a relatively strong position, which is related to their status as representatives of the Council of Ministers in regions. The tasks covering the scope in question (defence, security, public order) are performed by government administration. In particular, it is necessary to engage forces and resources at a larger scale, where local government authorities cannot counteract a given threat.

Province Governors ensure cooperation between all central and local government authorities active in the territory of their Provinces and manage their

operations, among others, in respect of preventing threats to state security and maintaining public order, as well as combating and removing their outcomes. Province Governors also carry out and coordinate tasks in the field of state defence security and crisis management¹. Managing defence affairs in a province belongs to the powers vested in Province Governors².

Province Governors may rely on the support of the Polish Armed Forces to perform their defence and security-related tasks where a threat is severe and their capabilities will not allow them to counteract such threats in situations expressly provided for by the legislator. Such support may only be given as a last resort where there are no other possibilities to restore normal conditions.

The objective of the paper is to define the status of Province Governors as authorities competent for security who may use assistance from the units and divisions of the Polish Armed Forces. The paper is primarily based on the doctrinal legal research method used to analyse the legal regulations governing the deployment of the Polish Armed Forces to combat threats occurring in the territory of a Province. The law theory method was also applied.

1. The deployment of units and divisions of the Polish Armed Forces to perform tasks related to preventing and combating infections and infectious diseases in humans

Everyone has the right to protect their health, and public authorities are obliged to counteract epidemic diseases³. The obligations of public authorities

¹ Article 22 (2) and (4) of the Act of 23 January 2009 on Province Governors and Government Administration in Provinces (consolidated text, Journal of Laws of 2023, item 190). See: M. Karpiuk, *Właściwość wojewody w zakresie kontroli i cenzury w czasie stanu wojennego*, „Studia Prawnoustrojowe” 2022, No. 58, pp. 205–206. By ensuring cooperation, Province Governors undoubtedly carry out a mission to integrate various central and local government authorities, W. Kitler, (in:) M. Czuryk, M. Karpiuk, M. Mazuryk (eds.), *Ustawa o wojewodzie i administracji rządowej w województwie. Komentarz*, Warsaw 2012, p. 91.

² Article 30(1) of the Homeland Defence Act of 11 March 2022 (consolidated text, Journal of Laws of 2022, item 2305, as amended), further referred to as the HDA.

³ Article 68 (1) and (4) of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483, as amended), hereinafter referred to as the Polish Constitution. Public health is subject to constitutional protection. Article 68 of the Polish Constitution defines the basic obligations of public authorities regarding health protection, and the corresponding individual's right to health protection. Health protection, as referred to in Article 68 (1) of the Polish Constitution, not only entails the provision of access to health services for everyone, but also includes combating epidemic diseases and preventing natural environment degradation which has a detrimental effect on human health – Judgement of the Provincial Administrative Court of 12 March 2020, II/Sa/Po 947/17, LEX No. 2945442. Health is the subject matter of protection under Article 68 of the Polish Constitution. The addressees of exercising the right provided for in this legal regulation are public authorities that are obliged to undertake

related to combating epidemic diseases include preventive measures, health prevention, care for hygiene, infection control, and medical care⁴. Under the Polish Constitution, health security gained a public dimension. Therefore, the specific tasks in respect of this security sector have been entrusted to public administration, as part of which Province Governors, as regional government administration authorities, perform a significant share of activities in this sphere and pursue the health policy of the Council of Ministers in the territory of their respective Provinces⁵.

The units and divisions of the Polish Armed Forces may be deployed in the event of extraordinary threats, which include hazards related to infections and infectious diseases in humans. If it is not possible to use other forces and resources, or if they prove insufficient, the Minister of National Defence may place units or divisions of the Polish Armed Forces at the disposal of a Province Governor on whose territory operations are being conducted concerning the state of epidemic emergency or the state of the epidemic, or if infections or infectious diseases are spreading and might pose a public health hazard, in particular in the event of particularly dangerous or highly contagious diseases. In these instances, such military units and divisions may be delegated to perform tasks related to these circumstances⁶.

Using the units and divisions of the Polish Armed Forces to perform tasks related to preventing and combating infections and infectious diseases in humans must be adequate for a given threat and may take place only if the use of other forces and resources is not possible or proves insufficient. The fact that the Polish Armed Forces may perform such tasks only if it is otherwise not feasible to combat a given threat is justified by the special mission they carry out in the defence domain.

The units and divisions of the Polish Armed Forces may be deployed concerning the activities necessitated by the state of epidemic emergency, the state of the epidemic and in the event of the threat of spreading infections or infectious diseases which pose a public health hazard.

measures to ensure the effective functioning of the healthcare system. The obligation corresponds to the individual's right to health protection. The right is universal, M. Czuryk, *Prawo do ochrony zdrowia pod rządami Konstytucji RP z 1997 r.*, (in:) J. Szymanek (ed.), *25 lat stosowania Konstytucji Rzeczypospolitej Polskiej*, Warsaw 2023, p. 408. Article 68 (1) of the Polish Constitution includes a policy-defining norm, which places an obligation on public authorities to fulfil a certain objective without specifying in detail the legal status of citizens concerning whom such objective is to be fulfilled, hence this legal provision may not be applied directly, W. Lis, M. Sadowska, *Bezpieczeństwo zdrowotne w praktyce medycznej*, Warsaw 2022, p. 18.

⁴ B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2009, p. 354.

⁵ M. Karpiuk, J. Kostrubiec, *The Voivodeship Governor's Role in Health Safety*, „*Studia Iuridica Lublinensia*” 2018, No. 2, p. 66.

⁶ Article 44a (1) of the Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans (Consolidated text Journal of Laws of 2022, item 1657, as amended), hereinafter referred to as the API.

Under Article 2 (22) of the API, the state of the epidemic is a legal status introduced across a given area concerning an epidemic outbreak, with a view to undertaking statutory measures to counteract the epidemic and preventive measures to minimise the impact of the epidemic. In turn, in accordance with Article 2 (23) of the API, the state of epidemic emergency means a legal status introduced across a given area concerning the risk of an epidemic, with a view to undertaking statutory measures to prevent the epidemic⁷.

Units and divisions of the Polish Armed Forces may perform tasks related to preventing and combating infections and infectious diseases in humans if public health is threatened, defined in Article 2 (35) of the API as the health status of the entire society or its part, determined on the basis of epidemiological and demographic indicators. Province Governors will not receive such support if a known threat does not affect public health.

As provided for in Article 44a (2) of the API, if the divisions and units of the Polish Armed Forces are deployed to perform tasks related to preventing and combating infections and infectious diseases in humans, such units and divisions are under the command of their official superiors and carry out tasks specified by the Province Governor. Placing the units and divisions at the disposal of a Province Governor does not affect the command structure, so the divisions and troops of the Polish Armed Forces remain under the command of their official superiors while performing tasks related to the state of epidemic emergency, the state of epidemic or in the event of a threat of spreading infections or infectious diseases which might pose a hazard to public health.

2. The deployment of units and divisions of the Polish Armed Forces to perform crisis management tasks

Crisis management is understood as the activities of public administration bodies which are part of state security management and which consist of the prevention of crises, preparation for controlling such crises as part of planned activities, response in the event of the occurrence of a crisis, elimination of its consequences, and the restoration of resources and critical infrastructure⁸. In

⁷ See: M. Karpiuk, *Właściwość wojewody w zakresie zapewnienia bezpieczeństwa i porządku publicznego oraz zapobiegania zagrożeniu życia i zdrowia*, „Zeszyty Naukowe KUL” 2018, No. 2, p. 238.

⁸ Article 2 of the Crisis Management Act of 26 April 2007 (consolidated text, Journal of Laws of 2023, item 122, as amended), hereinafter referred to as the “CMA”. See: M. Czuryk, *Podstawy prawne bezpieczeństwa narodowego w stanie kryzysu i wojny*, „Roczniki Nauk Społecznych” 2013, No. 3, p. 86; M. Karpiuk, *Position of County Government in the Security Space*, „Internal Security” 2019, No. 1, p. 151. Based on the definition of crisis management set out in Article 2 of the CMA, it is possible to list its four stages – prevention, preparation, response, and recovery, M. Czuryk, K. Dunaj, M. Karpiuk, K. Prokop, *Prawo zarządzania kryzysowego. Zarys sys-*

turn, under Article 3 (1) of the CMA, a crisis is understood as circumstances which harm the level of security of the population, property of significant size, or the natural environment, and which result in substantial limitations to the activities performed by public administration authorities due to insufficient forces and resources.

As provided for in Article 25 (1) of the CMA, if, in a crisis situation, it is not possible to use forces and resources or if such forces and resources might prove insufficient, the Minister of National Defence, at the request of a Province Governor, may place units and divisions of the Polish Armed Forces at the disposal of the Province Governor, and delegate them to perform specified crisis management tasks. The deployment of the Polish Armed Forces is possible solely as a last resort if it is not possible to otherwise counteract a given threat or remove its outcomes. Province Governors may use such units and divisions when they do not have enough forces and resources in a crisis.

As laid down in Article 25 (2) of the CMA and according to Provincial Crisis Management Plans, units and divisions of the Polish Armed Forces may help with crisis management tasks in line with their specialist training. Provincial Crisis Management Plans should envisage the deployment of units and divisions of the Polish Armed Forces, accounting for them on the list of forces and resources planned for crises, and specify the procedure for their deployment as part of carrying out planned undertakings in the event of a crisis.

The Provincial Crisis Management Plan is a document specifying how and in what situations the units and divisions of the Polish Armed Forces may be used. It is an expression of public administration's planning activities (in this case, the undertakings of the Province Governors who prepare such plans and submit them for the approval of a minister competent for public administration). The plan is of paramount importance in a crisis, as it prevents decision-making and organisational chaos and allows coordination of the measures adopted, including rescue operations.

Planning is one of the characteristics of public administration. Therefore, its bodies must develop various plans, strategies or programmes. Planning allows coordinated actions that facilitate the proper, timely and balanced fulfilment of objectives set by public administration in an organised and uninterrupted manner, in particular where multiple authorities are engaged⁹. As regards crisis management, the Polish Armed Forces belong to the group of such entities.

temu, Olsztyn 2016, p. 21. The notion includes the activities of public administration authorities which involve the response to a threat that results (or might result) in the occurrence of a crisis. The preventive aspect of such activities is vital as they allow the authorities to counteract the occurrence of such situations, M. Karpiuk, *Crisis management vs. cyber threats*, „Sicurezza, Terrorismo e Società” 2022, No. 2, p. 114.

⁹ M. Karpiuk, *Cybersecurity as an element in the planning activities of public administration*, „Cybersecurity and Law” 2021, No. 1, p. 46.

The tasks entrusted to the Polish Armed Forces in the event of a crisis situation, if the units and divisions of the formation have been placed at the disposal of Province Governors, are laid down in Article 25 (3) of the CMA, and they include: 1) cooperating on threat monitoring; 2) performing tasks related to the assessment of outcomes of the phenomena occurring in a threat-affected area; 3) performing search and rescue operations; 4) evacuating the affected population and property; 5) performing tasks aimed at preparing conditions for the temporary stay of evacuated residents in designated locations; 6) cooperating on the protection of property left in the threat-affected area; 7) restricting access to threat-affected areas or rescue operation sites; 8) performing safeguarding, rescue and evacuation tasks near threatened building structures and heritage sites; 9) carrying out works that require the use of specialist technical equipment or explosives at the disposal of the Polish Armed Forces; 10) removing hazardous materials and neutralising them, with the use of forces and resources at the disposal of the Polish Armed Forces; 11) liquidating chemical contamination, biological contamination and infections; 12) removing radioactive contamination; 13) performing tasks related to the repair and reconstruction of technical infrastructure; 14) cooperating on the assurance of traffic flow along transport routes; and 15) providing medical assistance and performing sanitary and hygiene-related tasks, and tasks aimed at counteracting an epidemic. As can be seen above, the legislator assigned a wide range of activities to the units and divisions of the Polish Armed Forces, which stems directly from the status of the formation that was established to perform tasks of utmost significance from the perspective of state security.

Under Article 25 (5) of the CMA, the units and divisions of the Polish Armed Forces may be placed at the disposal of Province Governors as part of their regular employment structure or as an *ad hoc* task force. It depends on the type of threats determining the emergence of a crisis and its outcomes, and the Province Governor's needs regarding the support required to perform crisis management tasks.

As per Article 14 (2)(4) of the CMA, the Province Governor submits a request for the deployment of *ad hoc* task groups to perform a cull of free-roaming (wild) animals across specified areas.

Province Governors ensure the coordination of the tasks performed by the units and divisions of the Polish Armed Forces regarding crisis management in the territory of a respective Province. The coordination includes activities aimed at an efficient inclusion of the units and divisions of the Polish Armed Forces in task performance, taking into account the time and place of their deployment and the procedures for cooperating with other entities. Province Governors are competent authorities for coordinating crisis management activities conducted by the Polish Armed Forces under Article 25 (6) of the CMA.

In Article 25 (9) of the CMA, the legislator clearly states that the deployment of units and divisions of the Polish Armed Forces in a crisis may not infringe on their capabilities concerning tasks arising from the Polish Constitution and ratified international agreements. Crisis management tasks are executed as additional activities, provided that their delivery will not weaken the state defence system.

Crisis management, as a sphere which is the responsibility of the Polish Armed Forces in specified circumstances, is stipulated not only in the CMA but also in the HDA. In accordance with Article 11 (3) of the HDA, the Polish Armed Forces may take part in combating natural disasters and removing their outcomes, counter-terrorist operations, property protection activities, search operations, manoeuvres aimed at protecting human health and life, and cyberspace protection and defence, clearing areas of explosives and hazardous materials of military origin, and neutralising them, as well as in performing crisis management tasks. Under Article 22 (2)(6) of the HDA, the Commander of the Territorial Defence Force is responsible for, in particular, planning, coordinating and performing tasks related to the participation of the divisions and units of the Polish Armed Forces in combating natural disasters and removing their outcomes, activities in respect of property protection, search operations, and operations aimed at saving or protecting human life and health, as well as participating in the performance of crisis management tasks. In accordance with Article 175 (1)(2) of the HDA, soldiers of the Territorial Defence Force may be called to report immediately for territorial-defence military duty on a rotational basis, among others, to ensure military units' participation in combating natural disasters and removing their outcomes, counter-terrorist measures, activities in respect of property protection, search operations, operations aimed at saving or protecting human life and health, clearing areas of explosives and hazardous materials of military origin, and neutralising them, as well as participating in the performance of crisis management tasks.

3. The deployment of units and divisions of the Polish Armed Forces to prevent and remove the outcomes of natural disasters

During a state of natural disaster, the Province Governor manages activities conducted to prevent and remove the outcomes of natural disasters if the state of natural disaster is introduced across the area of more than one district forming part of a respective Province¹⁰.

¹⁰ Article 8(3) of the Natural Disasters Act of 18 April 2002 (consolidated text, Journal of Laws of 2017, item 1897), hereinafter the "NDA". See: M. Czuryk, *Zadania organów jednostek samorządu terytorialnego w stanie klęski żywiołowej*, „Zeszyty Naukowe AON” 2009, No. 3, p. 407.

During a state of natural disaster, if the deployment of other forces and resources is not possible or insufficient, under Article 18 (1) of the NDA, the Minister of National Defence may place units and divisions of the Polish Armed Forces at the disposal of a Province Governor on whose area a natural disaster has occurred, and delegate such units and divisions to perform tasks related to preventing or removing the outcomes of a natural disaster. In accordance with Article 2 of the NDA, the state of natural disaster may be established to prevent the outcomes of natural catastrophes or technical failures which have the properties of a natural disaster and to remove such outcomes. In turn, as stipulated in Article 3 (1)(1) of the NDA, a natural disaster is a natural catastrophe or a technical failure whose outcomes are a threat to the lives and health of a large population, property of significant size or the natural environment across vast areas, where support and protection actions may be effectively undertaken only with the use of extraordinary measures, as part of the cooperation between various entities and institutions, and specialist services and formations operating under a single command.

The units or divisions of the Polish Armed Forces may be deployed during a state of natural disaster, which means that the mere occurrence of a natural catastrophe or a technical failure is not sufficient, as the units or divisions may be placed at the disposal of a Province Governor only after the Council of Ministers has established such a state of exception by way of regulation. The Polish Armed Forces are not delegated to perform random tasks. They may only engage in duties indicated by the legislator and those which involve preventing the outcomes of natural disasters.

If the units and divisions of the Polish Armed Forces are at the disposal of a Province Governor, they are under the command of their official superiors. Consequently, they perform tasks defined by the Province Governor. This principle is laid down in Article 18 (2) of the NDA.

Rescue or preventive activities performed to avoid or remove the outcomes of natural disasters, in which the units and divisions of the Polish Armed Forces may participate, include: 1) cooperating on threat monitoring; 2) performing tasks related to the assessment of outcomes of the phenomena occurring in a threat-affected area; 3) performing search and rescue operations; 4) evacuating the affected population and property; 5) performing tasks aimed at preparing conditions for the temporary stay of evacuated residents in designated locations; 6) cooperating on the protection of property left in the threat-affected area; 7) restricting access to threat-affected areas or rescue operation sites; 8) performing safeguarding, rescue and evacuation tasks near the threatened cultural assets; 9) carrying out works that require the use of specialist technical equipment or explosives at the disposal of the Polish Armed Forces; 10) removing hazardous materials and neutralising them, with the use of forces and resources at the disposal of the Polish Armed Forces; 11) liquidating biological con-

tamination and infections; 12) performing tasks related to the repair and reconstruction of technical infrastructure; 13) cooperating on the assurance of traffic flow along transport routes; and 14) providing medical assistance, and performing sanitary and hygiene-related tasks and tasks aimed at counteracting an epidemic. The tasks are performed by the units and divisions that have appropriate specialist training¹¹.

Conclusions

Article 26 of the Polish Constitution states that the Polish Armed Forces protect state independence and its territory's indivisibility and ensure its borders' security and inviolability¹². They must remain impartial with respect to political affairs, and are subject to civil and democratic control¹³.

The Polish Armed Forces were established to provide military security. Security is a domain of great significance, both to the state as a public institution and to society and individual society members. For that reason, it should be viewed as a common interest¹⁴. Security is an institution which is to protect us against threats (preventive activities), respond to threats if they have occurred (ongoing activities), and remove the outcomes of threats (remedial actions). The forces and resources deployed in the sphere of security should be focused on counteracting threats, eliminating their source once a risk occurs, protecting the affected area, and removing the outcomes of the occurrence. The activities must be undertaken to restore a threat-free status as soon as possible¹⁵. Along with

¹¹ § 2 of the Regulation of the Council of Ministers of 20 February 2003 (Journal of Laws of 2003, No. 41, Item 347).

¹² See: M. Karpiuk, *Służba wojskowa żołnierzy zawodowych*, Olsztyn 2019, pp. 15–18. Article 26(1) is a policy-defining provision and indicates the tasks which the Polish Army is obliged to perform, P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku*, Warsaw 2008, p. 70.

¹³ See: M. Karpiuk, *Activities of the Polish Armed Forces in Cyberspace and Their Constitutional Status* „Przegląd Prawa Konstytucyjnego” 2023, No. 3, p. 290. To equip the Polish Armed Forces with capabilities to conduct military operations, it is necessary to not only organise specialist courses, exercises and training but also to provide appropriate technical and human resources, T. Zdzikot, *Capacity building – how to encourage cyber-experts to join the military?* „Cybersecurity and Law” 2020, No. 2, p. 41.

¹⁴ M. Czuryk, *Bezpieczeństwo jako dobro wspólne*, „Zeszyty Naukowe KUL” 2018, No. 3, p. 15.

¹⁵ Karpiuk M., *Ubezpieczenie społeczne rolników jako element bezpieczeństwa społecznego. Aspekty prawne*, „Międzynarodowe Studia Społeczno-Humanistyczne. Humanum” 2018, No. 2, p. 68. For additional information about security, refer to: M. Czuryk, *Activities of the Local Government During a State of Natural Disaster*, „Studia Iuridica Lublinensia” 2021, No. 4; A. Pieczywok, *Działania społeczne w sferze bezpieczeństwa wewnętrznego*, Lublin 2018; M. Czuryk, *Właściwość Rady Ministrów oraz Prezesa Rady Ministrów w zakresie obronności, bezpieczeństwa i porządku publicznego*, Olsztyn 2017; A. Pieczywok, *Idee bezpieczeństwa człowieka w teoriach i badaniach naukowych. Wybrane problemy*, Bydgoszcz 2021; M. Nowikowska,

the changing intensity and variety of threats, the powers of public authorities responsible for the state of state security must be adapted to the unfolding situation. Only adapting measures to the potential and actual threats, and their dynamics, will promote the social sense of security¹⁶.

In general, the principal goal of the Polish Armed Forces is to ensure the state's external security. As regards internal state security, their participation has a rather exceptional nature where it is otherwise not possible to counteract a given threat or remove its outcomes or if it requires disproportionately high costs. They play an auxiliary role in the sphere and may be deployed only if it does not infringe on their combat capabilities.

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¹⁶ M. Karpiuk, *Prezydent Rzeczypospolitej Polskiej jako organ stojący na straży bezpieczeństwa państwa*, „*Zeszyty Naukowe AON*” 2009, No. 3, p. 399.

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Przekazanie do dyspozycji wojewody pododdziałów lub oddziałów Sił Zbrojnych Rzeczypospolitej Polskiej

Streszczenie

Wojewoda jest organem, który odpowiada za wykonywanie polityki Rady Ministrów na terenie województwa. Polityka ta obejmuje również sprawy z zakresu bezpieczeństwa. Nie zawsze wojewoda będzie miał wystarczające siły i środki, które będą pozwalały na walkę z zagrożeniami. W przypadku gdy zagrożenie będzie miało charakter szczególny, będzie związane ze stanem zagrożenia epidemicznego, stanem epidemii, stanem klęski żywiołowej czy też sytuacją kryzysową, mogą być przekazane do dyspozycji wojewody pododdziały i oddziały Sił Zbrojnych RP. Użycie ich jednak będzie dopuszczalne, jeżeli inne siły i środki nie doprowadziły do neutralizacji zagrożenia lub jego skutków bądź mogło okazać się niewystarczające. Pomimo przekazania takich pododdziałów i oddziałów do dyspozycji wojewody, to jednak pozostają one nadal pod dowództwem przełożonych służbowych.

Słowa kluczowe: wojewoda, Siły Zbrojne RP, zarządzanie kryzysowe, stan klęski żywiołowej, stan epidemii.