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PUBLIC ORDER PROTECTION IN MUNICIPAL TERRITORIES

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Abstract. *The author of the present article analyzes the legal regulation regarding the subjects responsible for the protection of public order in municipal territories with an emphasis on the collision between the activity and responsibility of the police and municipal institutions. The author suggests multiple solutions to the problem of competence delimitation in the sphere of public protection. According to the author, in municipal territories four multiple-choice forms of public order protection are possible and the right to choose the forms which would most effectively guarantee the safety of the community should belong to local government institutions. What is more, the article deals with an analysis of the organizational problems related to the implementation of the functions of public order protection and an evaluation of the prospects of the decentralization of these functions. The author presents a critical evaluation of the situation when public order protection requirements which logically derive from the interests of local residents are identified by central public administration institutions rather than local government institutions or regional-level institutions. The planning of the safe environment strategy must be based on the interests of a country's local residents; what is more, the particularities of different regions must be considered. To solve the mentioned problems two alternative public order protection strategy models are suggested. Finally, the author comes to the conclusion that local government institutions should be actively motivated to get involved in securing public safety through legal and organizational means.*

Keywords: *police, local government, municipalities, crime prevention, public order protection.*

Introduction

The current situation in the sphere of public order protection can be defined in an economic term—a police monopoly. According to economic rules, the maintenance of a monopoly under the power of only a few subjects reduces competitiveness and, as a result, consumers suffer. It can be assumed that the security interests of local residents suffer due to the fact that the police control the functions of public order protection. According to Professor B. Melnikas, precisely the absence of security and stability as well as the aim to guarantee security and stability are the factors which stimulate transformations in society and become catalysts intensifying these transformations.¹ Therefore, it is necessary to search for alternative public order protection models that would apply to the current system, retain a stable society and reduce the sense of insecurity. Consequently, while in search of alternative security forms, the main focus should be on local government institutions as subjects responsible for the local residents' social (as well as physical) security.

It is essential to perform a legal and organizational analysis of public order protection in order to substantiate the idea that the competence of municipal institutions should expand in the field of public order protection.

To reach this aim, several tasks are set:

- to analyze the legal aspects of public order protection in municipal territories;
- to analyze the organizational aspects of public order protection in municipal territories;
- to identify the practical problems of the implementation of the functions of public order protection in municipal territories.

The object of the present research is the practical problems related to public order protection activity in municipal territories. The methods applied for the research include systematic analysis, document analysis, historical comparison, etc.

On the national level the issue of the present article was partly analyzed by A. Šakočius, A. Pumputis, V. Justickis; on the international level the works of B. Lovely, J. Rose, C. Lewis, D. Bergmans and other authors are important.

1. Public Order Protection in Municipal Territories: the Legal Aspect

The 1992 Constitution of the Republic of Lithuania, the Republic of Lithuania Law on Amending the Law on Local Self-Government and other legal acts regulate the status of municipalities and their place in the system of public administration. Some of the norms of Section X (*Local Government and Control*) of the Constitution of the Republic of Lithuania are prescriptive; therefore, more specific local government activity regula-

1 Melnikas, B. *Transformacijos: visuomenės pokyčiai, naujas tūkstantmetis, valdymas ir savireguliacija, Rytų ir Vidurio Europa* [Transformations: Changes of Society, New Millennium, Management and Self-Regulation, Eastern and Western Europe]. Vilnius: Vaga, 2002, p. 104.

tion is established in other legal acts. The particularities of local government activities are defined in the Republic of Lithuania Law on Amending the Law on Local Self-Government.² This law settles the following functions of municipalities:

- Discretionary;
- National (assigned to local government institutions).

Under Article 6 of the Local Government Act, one of the main functions of municipalities is to participate in public order protection, namely, to create and implement local crime control and prevention programs in cooperation with the local police as well as public organizations and residents. Similarly, Article 14 of the Law on Police Activity stipulates that ‘police commissars in lower levels..., develop and implement crime prevention, resident life, health, property and public order prevention programs with the help of local government institutions...’³.

While taking into account the functions of the institutions regulated by different laws, it can be stated that the initiators of this sort of collaboration are municipalities, since the abovementioned function of a municipality is referred to as discretionary. That is why the municipalities which implement this function have ‘the freedom of decision initiative, decision-making and implementation and are responsible for carrying out these functions’⁴. Therefore, it is important to point out concepts such as ‘decision initiative’, ‘decision-making and implementation’ and ‘the responsibility for carrying out these functions’.

Municipalities have the right of decision initiative and decision-making in the field of public order protection while organizing or giving out permits for mass events (concerts, parades, meetings, sport shows, etc.). They can initiate or make a decision to administer public order.

While analyzing the municipal power of the implementation of decisions in the field of public order protection, two alternatives turn out to be possible: 1) public order protection can be executed by *the police agencies*; 2) public order protection can be executed by *private security services*. In this sense, municipalities cannot have substantial control over police activity (although lower institutions of the police are accountable to the mayor and to the society) because their power is exercised through higher police institutions, as it is stated in Article 13 of the Law on Police Activity.

Consequently, a question arises whether municipalities can be responsible for the performance of these functions as stipulated in Article 3 of the European Charter of Local Self-Government⁵ which declares full (essential) municipal responsibility.

According to the experience of other countries, this problem can be solved in different ways:

- public order protection, its planning and implementation are the responsibility of the state police;

2 The Republic of Lithuania Law on Amending the Law on Local Self-Government. *Official Gazette*. 2008, No. 113-4290.

3 Law on Police Activity. *Official Gazette*. 2000, No. 90-2777.

4 *Supra* note 2.

5 The European Charter of Local Self-Government. *Official Gazette*. 1999, No. 82-2418.

- municipalities are responsible for the implementation of these functions and gain full control of public order protection.

If priority was given to the first example, local government could lose control of public order protection which is of key importance to local residents. The significance and social purpose of the democratic institute of local government would be in decline because, according to the experience of foreign countries, the problems of public order protection should be solved primarily by local residents and only then on a national level. In order to verify this idea, a reference to the experience of France can be made. While developing the policy of local safety, crime prevention services and community police were established in the communes, actions were taken to decentralize the police activity and tactics aimed toward community law and order were created.⁶

If the second example characteristic to a civil society was chosen, municipalities would have more alternatives to choose from, such as the form of the implementation of the public order protection function.⁷

The following forms of the implementation of the public order protection function can be distinguished:

- to implement this function independently through, for example, public order protection services provided by local government institutions;
- through state police agencies;
- through private security agencies⁸;
- through the establishment of independent organizations comprised of local residents⁹.

These forms are fairly new and have not been thoroughly analyzed by scholars.

An important reason for the private security institutions' inability to become full-fledged subjects of public order protection is that their activity is based on civil contracts, i.e. a reward for the service. Their activity is based on civil law, whereas the protection of public order is the object of public legal activity but not the object of civil contract. Consequently, the protection of public order should be safeguarded only by an institution of public authority.

A similar approach could be applied to agencies which consist of volunteer local residents. Even though such agencies have the powers of public administration, they are considered public organizations because they are formed on a voluntary basis. In the area of public order protection their activity would be limited, as public organizations are not capable of exercising certain functions of public administration institutions, for example, the applicability of duress.

6 Rose, J. *Bendruomenės sutartys plėtojant nusikalstamumo prevenciją* [Community Treaties in Developing Crime Prevention]. Vilnius: Mykolas Romeris universitetas, 2001, p. 12.

7 It is important to note that municipalities should have the right, not the duty, to implement the functions of public order protection.

8 *Organizacija i dejatelnost municipalnoj miliciji: Nauchno-analiticheskij obzor* [The Organization and the Activity of Municipal Militia: Scientific-Analytic Review]. Moskva, 1994, p. 12.

9 Fatejef, P. P. *Administrativno-pravovoj status municipalnoj miliciji Rosijskoj Federaciji* [The Administrative-Legal Status of the Municipal Militia in the Russian Federation]. Moskva, 1996, p. 55.

The opinions of the employees at local government institutions were very important while trying to analyze the forms of public order protection in municipalities. The present sociological research¹⁰ showed that 69% of the questioned individuals agreed to the fact that local government institutions should have the right to establish their own public order protection agencies. However, 13% of the respondents said that municipalities should implement this function by making contracts with the city and local police agencies as well as by establishing public voluntary organizations consisting of local residents. Moreover, 6% of the respondents stated that it would be better to give the authority of public order protection to private security services.

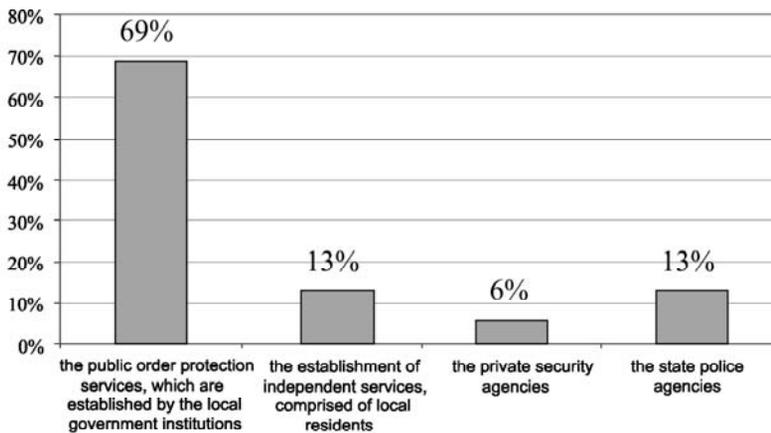


Figure 1. Forms of the implementation of public order protection in municipal territories

The results of the sociological research should be analyzed unambiguously. However, a presumption can be made that the constant fluctuation of social processes demands new conditions for the establishment of municipal guarantees; therefore, municipal institutions could take the responsibility to implement the public order protection functions in their territories in the future.

With reference to the latter thoughts and Article 6, Part 34 of the Republic of Lithuania Law on Amending the Law on Local Self-Government, ‘participation, cooperation in public order protection, as well as in the creation and implementation of crime prevention programs’¹¹ must be changed.

10 The members of the municipal council and the legal committee were questioned during the research. The members of the municipal council and the legal committee were chosen as respondents because they are obliged to supervise the enforcement of law and the decision making by the council, the board and the mayor in the field of public order protection. It is important to note that only legal committees have been established in only eleven cities and municipal districts. 40 members of the legal committees were questioned within separate cities and municipal districts. The goal of the research was to determine whether public order protection institutions are necessary in the municipalities.

11 *Supra* note 2.

The author of the article proposes an amendment to Article 6, Part 8 of the Republic of Lithuania Law on Amending the Law on Local Self-Government: '*participation, cooperation in public order protection, as well as in the creation and implementation of crime prevention programs through municipal public order protection services*'.

2. Public Order Protection in Municipal Territories: Organizational Aspect

While analyzing the peculiarities of the existing models of local government in the world (continental law, common law and a mixture of both)¹², it can be stated that the majority of the features that the Lithuanian local government system possesses are of the continental model (the representatives of the state who take part in local government activities have extensive powers of control over municipalities, since they have the right to block and appeal any decisions made by municipalities in courts or through extrajudicial means; other state institutions function next to local government institutions in municipal territories)¹³. Lithuania's historical process had a significant influence on the development of a centralized local government system. However, strong centralization of public administration has not always been a negative aspect of the development of local government and other state institutions.

Historical experience has shown that a centralized public administration can prove to be an advantage in times of social crises or upheavals. Therefore, it can be affirmed that it was essential to maintain strict control over public administration institutions while they were in the process of development after the restoration of the independence of the Republic of Lithuania.

Currently, the decentralization¹⁴ process is an issue that is frequently discussed due to the strengthening of democracy and the formation of a public society.

Decentralization is a process associated with the transference of functions, i.e. the functions of central government are executed by lower forms of government which are on the sub-national level. The notion of decentralization can be explained through the concepts of the implementation of power and authority in the state: local government is seen as a separate form of the implementation of power and authority. Moreover, one

12 Novikovas, A. *Viešosios tvarkos apsauga vietos savivaldoje* [Public Order Protection in Municipal Areas]. Daktaro disertacija. Socialiniai mokslai (teisė). Vilnius: Mykolo Romerio universitetas, 2003, p. 62–65.

13 Law on Administrative Supervision of Municipalities. *Official Gazette*. 2004, No. 98-3626.

14 Justickis, V. *Prevenicinė policijos veikla remiantis bendruomenės teisėtvarkos modeliu* [The Prevention Activity of the Police Based on the Model of Community Law]. Vilnius: Lietuvos teisės akademija, 2000, p. 29; Šakočius, A. *Kova su netvarka įgyvendinant bendruomenės teisėtvarką* [A Fight with Disorder in the Implementation of Community Law]. Vilnius: Lietuvos teisės akademija, 2000, p. 43–45; Pumputis, A.; Bukauskas, A. *Valstybės ir savivaldos institucijų bendradarbiavimas* [The Cooperation Between the State and Municipal Institutions]. Vilnius: Mykolo Romerio universitetas, 2001, p. 46; Gudelis, G. *Decentralizacija ir dekoncentracija valstybės valdyme. Viešojo administravimo reforma: valstybinės ir socialinės-ekonominės problemos* [Decentralization and Deconcentration in the State Government, The Reform of Public Administration: State and Socio-Economic Problems]. Vilnius, 2002; Kuklianskis, S. *Policijos organizacijos ir veiklos principai* [Police Organisations and the Principles of Activity]. *Jurisprudencija*. 1998, 10(2).

may refer to the *subsidiary principle*¹⁵ which is widely used in the European Union and which settles the exact powers of local government in certain spheres giving the priority to the most qualified party.

In order to determine the perspectives of decentralizing the public order protection functions, it is essential to perform an analysis of the public order protection mechanism in Lithuania.

According to the Constitution, public order protection is a function of administration which is guaranteed by the Government, whereas the formation of the strategy belongs to the authority of the Ministry of the Interior. The Police Department is a subdivision of the Ministry of the Interior which is responsible for the planning of the main strategies that the subordinate police institutions should follow as well as the public order protection (Law on Police Activity, Article 13, Part 2). This means that the requirements of public order protection which derive from the interests of local residents are formed in central rather than local government or regional institutions which deal with these problems, i.e. in the Ministry of the Interior and the Police Department.

The Ministry of the Interior cannot perceive the needs and interests of the local residents of particular territories (it is impossible) but it has to form a common public order protection strategy for all of the subordinate police institutions; however the understanding of order and safety (a safe environment) differs in various parts of Lithuania (for example, frontier zones, national minority territories, etc.). A single model of public order protection cannot be applied in the entire country.¹⁶ Consequently, the planning of the safe environment strategy can be held standardized at best because instead of showing the Lithuanian regional particularities it only reflects the narrow interests of the countries' residents. Likewise, this gives reason to state that the activity priorities assigned to the police institutions are distorted.

In order to avoid the collision in the field of public order protection, the following two alternative choices are available:

- *regional institutions should take responsibility for the strategic planning of public order protection;*
- *local government institutions should take responsibility for the strategic planning of public order protection.*

It is important to have in mind that the heads of the districts are directly accountable to the Government; however, they receive orders from various ministries. Therefore, some of the ministers could be considered the functional leaders of the heads of the districts and, consequently, the district government structure can be called functional.¹⁷ It can be presumed that if the strategic planning of the police activity is passed onto the regional level, a process of the deconcentration of the government function can begin

15 Usher, J. A. *Bendrieji Europos Bendrijos teisės principai* [General Principles of the European Community Law]. Vilnius: Naujoji Rosma, 2001, p. 45–46.

16 Ignatienė, D. *Savivaldybių veikla ir vaidmuo valstybės valdymo struktūroje* [The Activity and the Role of Municipalities in the State Government]. Vilnius, 1992, p. 18.

17 Gudelis, G., *supra* note 14, p. 1.

and the Ministry of the Interior can attain potential power over the strategic planning of police activity.

Meanwhile, local government institutions are directly accountable to the electors. The municipal accountability to the Government or other central state institutions is indirect. Therefore, when municipalities get more independence from central institutions and when they become familiar with the needs of local residents, they are able to form a comprehensive public order protection strategy. The subsidiary principle would be applied if the planning of the public order protection strategy was attributed to the power of local government institutions.

It must be noted that the abovementioned strategy could be planned through the collaboration of local government institutions and police institutions. For instance, the Great Britain police and municipalities have great experience in collaboration with an intention to implement the local crime reduction strategy in its regions.¹⁸

3. The Practical Problems of Implementing the Public Order Protection Functions in Municipal Territories

The problems of the planning and implementation of the strategy of public order protection are very similar. Basically, the public order protection functions are performed by the subdivisions of the Ministry of the Interior, i.e. police institutions. They are subordinate to higher government institutions which means that they have to submit to their orders and that the interests of local residents are not the primary factor in their activity. This has caused the formation of a practice which results in the focus of the basic police force on fighting dangerous and resonant crimes while a vast variety of other crimes, such as minor offences which influence the society's sense of security, get insufficient attention. The decisions of local government institutions based on the criminological situation are not obligatory (it is a moral requirement); the responsibility for the coordination of common projects and activity belongs to the mayor and the commissar. This situation has certain negative aspects because the interests of local residents are not protected enough and, as a result, this causes a negative attitude towards the police.

South America and Western Europe faced similar problems in the seventh and eighth decades of the twentieth century. This period has been associated with the 'strategy of quick reaction to events' and the unsettled bond between the police and the community due to the increase in specialized police functions.¹⁹ This sort of police activity manifested in the reaction to resonant crimes and the disrespect towards the local residents' interests regarding order and safety did not give any positive results. For example, a research performed in Belgium in the middle of the seventh decade of the twentieth cen-

18 Lovedy, B. *Police Governance in the Province: The Changing Role of the Police Authority*. University of Portsmouth, 2001, p. 14–15.

19 Lewis, C. Consider the Present Use of Police Manpower, Including Civilian Staff and Suggest Ways in which All Resources Could Be Used More Effectively. *Police Journal*. 1983, 56(1): 19–29.

ture showed that quick reaction to emergency calls did not have any effect on the arrests of the offenders, nor did it influence the satisfaction of the clients.²⁰

Due to the inability of the police to adjust to the safety requirements of residents, the police and the community are not integrated into a united social system. The police which are a social institute have been 'above' or 'beside' the community for a long time and have followed the directions of higher government institutions. Social norms have not had a big effect on the police activity. This caused the formation of a self-contained system and a detachment from the community.

While considering the social purpose of local government institutions, it could be stated that they have always been aware of the problems that local residents face. Currently, the authority of municipalities is growing rapidly, more people rely on their actions. Therefore, this is the proper time to actively motivate local government institutions to participate in the establishment of safe environment while providing them with beneficial legal, organizational and other activity means.

Conclusions

With regard to the thoughts laid out in this article, it can be concluded that the importance of the role of local government institutions in the sphere of guaranteeing local resident security should be increased. First of all, this idea, i.e. the necessity to give local government institutions the right to choose the form of public order protection (the state police, private security firms, municipal public order security services, or organizations consisting of local residents) which would guarantee an effective satisfaction of the needs of local residents, should be reflected in legal acts.

A high level of institutional centralization in public administration neither allows to properly evaluate the security requirements of the people in various parts of Lithuania nor the public order protection strategies which are being planned, are standardized and reflect only a small part of the requirements of local residents. Therefore, municipalities could form a far more precise strategy of public order protection if they had greater independence from central government institutions and were familiar with the needs of local residents. Such a strategy would become the basis of public order protection in municipal territories.

The inability of the police to adjust to the safety requirements of residents is natural because the police and the community have not been integrated into a united social system. The police which are a social institute have been 'above' or 'beside' the community for a long time and have followed the directions of higher government institutions. While considering the social purpose of local government institutions, it could be stated that they have always been aware of the problems that local residents face.

20 Bergmans, D. Policijos darbas su visuomene – bendras supratimas. *Pranešimų tarptautiniuose seminaruose rinkinys. Policija ir visuomenė* [Police Work with the Society: General Understanding. Reports of International Seminars. Police and Society]. Vilnius, 1997, p. 64–65.

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VIEŠOSIOS TVARKOS APSAUGA SAVIVALDYBIŲ TERITORIJOSE

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Santrauka. Straipsnyje keliamas klausimas, kas turėtų ir galėtų būti atsakingas už viešosios tvarkos apsaugą savivaldybių teritorijoje ir kokios galėtų būti tos atsakomybės ribos. Dabartiniu metu, kai Lietuvoje gileja ir ekonominė, ir socialinė krizė, policijos viešosios tvarkos apsaugos monopolija yra nepriimtina. Nedidelio skaičiaus subjektų monopolio išlaikymas mažina konkurenciją, dėl to nukenčia vartotojai. Yra daroma prielaida, jog policijai išlaikant viešosios tvarkos apsaugos funkcijos monopolį nukenčia gyventojų saugumo interesai.

Straipsnyje analizuojamos teisinės bei organizacinės prielaidos, determinuojančios efektyvesnę viešosios tvarkos apsaugą savivaldybių teritorijose. Autoriaus nuomone, įmanomos kelios alternatyvios viešosios tvarkos apsaugos formos savivaldybių aptarnaujamose teritorijose. Pabrėžiama, jog vietos savivaldos institucijoms turėtų būti suteikiama teisė rinktis, kokia iš analizuojamų formų efektyviausiai užtikrintų jų aptarnaujamos teritorijos gyventojų saugumo poreikius

Sprendžiant iškeltas problemas darbe siekiama pagrįsti mintį, jog ateityje vietos savivaldos institucijų kompetencija, saugant viešąją tvarką, turėtų didėti. Šiam tikslui pasiekti yra formuluojami keli uždaviniai:

- atlikti visuomenės saugumo užtikrinimo situacijos teisinę analizę;
- atlikti visuomenės saugumo užtikrinimo situacijos organizacinę analizę;
- identifikuoti praktines problemas, įgyvendinant viešosios tvarkos apsaugą savivaldybių teritorijose.

Išsprendus uždavinius yra pateikiamos kelios išvados ir pasiūlymai:

- vietos savivaldos institucijų veikla, užtikrinant vietos gyventojų saugumą, turėtų būti plečiama, o tokios idėjos turėtų atsispindėti teisės aktuose, t. y. reglamentuojant vietos savivaldos institucijų teisę pačioms spręsti, kokia viešosios tvarkos apsaugos forma (pasitelkiant valstybinę policiją, privačias saugos tarnybas, kuriant savivaldybių viešosios tvarkos apsaugos tarnybas ar tarnybas, savanoriškai formuojamas iš vietos gyventojų) efektyviai užtikrintų vietos gyventojų saugumo poreikius;

- savivaldybės, būdamos labiau nepriklausomos nuo centrinės valdžios ir žinodamos vietos gyventojų poreikius, galėtų suformuluoti išsamesnę viešosios tvarkos apsaugos strategiją, kuria remiantis ir būtų įgyvendinama viešosios tvarkos apsauga savivaldybės aptarnaujamoje teritorijoje;

- natūralu, kad policija nesugeba efektyviai ir visiškai užtikrinti viešosios tvarkos apsaugą, nes ši institucija ir visuomenė nėra integruotos į vientisą socialinę sistemą. Gana ilgai policija, kaip socialinis institutas, buvo aukščiau už visuomenę arba šalia jos ir savo veikloje vadovavosi aukštesnių pagal hierarchiją valstybinių institucijų nurodymais. Skir-

tingai nei policijos, vietos savivaldos institucijos, atsižvelgiant į jų socialinę paskirtį, visais laikais buvo arčiausiai vietos gyventojų problemų.

Reikšminiai žodžiai: *policija, vietos savivalda, savivaldybė, nusikaltimų prevencija, viešosios tvarkos apsauga.*

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