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Implementation of the idea of Community Police Forces after 1990

The idea to establish police reporting to the local authorities and not to the government under the name of Straż Miejska (though literally "municipal guard", referred to as "city police" in the article) was born in 1989/1990. At the time, while carrying out a profound reform of the state, work continued among others on the concept of local and regional authorities and the concept of organs protecting order and security. Conceptual effort nearly instantaneously transformed into legislative work.

As the tasks set in the acts of law (the so-called "own tasks") of municipal authorities were to include the matters of "public order" (Art. 7 section 1 item 14 of the Act of 8th March 1990 on territorial authorities, Polish *Journal of Laws* No. 16 item 95), it seemed natural that they needed some instruments to protect that order.

On the other hand, working on a concept of model services for protecting order and security, in line with the overarching idea to delegate some competencies of the State to local authorities, an assumption was made to entrust them with at least some forces designed to protect order. This is how the idea to establish city police forces was born. The Act of 6th April 1990 on Police (Polish *Journal of Laws* No. 30 item 179) includes Chapter 4 entitled city police forces, which contains two articles: 23 and 24.

The article 23 stated that:

1. Mayors of cities may, as agreed with the Minister of Internal Affairs, establish uniformed city police forces.

2. The Council of Ministers defines through a regulation detailed principles of collaboration between Police and city police forces, as well as the scope in which the Chief Commander of Police provides expert supervision over these forces and assists them.

It was therefore assumed that the establishment of city police is not a duty of mayors, but a question of their choice. If they did not want or could not, e.g. due to the financial condition of a city or town, establish a policing force reporting to them, they could initiate the establishment of territorial police within their jurisdiction, and participate in the maintenance of such a force in line with the conditions negotiated with the Police, or to do with the general Police operating within their jurisdiction, towards whom they would exercise their rights, as resulting from law (see below).

It was assumed that city police would be established only in municipalities, and it was believed that incurring the entire cost of maintaining such a force may go beyond the capacities of a great proportion of rural municipalities; thus it was believed that these would rather be territorial police posts that would be established in rural areas.

Everything was to a certain degree experimental. In 1989/1990, there was still no certainty about how the territorial authorities would function, how they would cope with their tasks, and also with their finances etc. Forecasting of threats to order and public security could hardly be prognosticated at the time as well. Not only in Poland. It must be reminded that system transformation in this part of Europe was a single gigantic economic, social, civic, and political experiment.

The Art. 23 item 3. of the Act on Police stated that: With respect to the foregoing Art. 24 sections 1-4, the clauses contained in Chapters from 1 to 3 of this Act, and concerning the Police apply mutatis mutandis to city police forces.

In turn, Article 24 stipulated that:

1. The detailed scope of tasks, duties, and rights of city police forces, and also their structure, uniforms, insignia and weapons are defined in the rules and regulations of the police force awarded by the mayor of the city, as agreed with the Minister of Internal Affairs.

2. Officers of city police forces perform solely administrative and enforcement duties.

3. Officers of city police forces may not use firearms and/or coercive means, apart from situations defined in Art. 16 section 1 items 1 and 2.

4. The costs related to the operation of city police forces are covered from the funds of territorial authorities.

What do the statements above mean? First of all that city police forces, unlike the Police, cannot run operational intelligence and or investigations. Moreover, as compared to the Police, they have a limited catalogue of coercive means that they can resort to, and they are not allowed to use firearms.

They were only allowed to use "physical, technical, and chemical means used to incapacitate or escort people and stop vehicles." (Art. 16 section 1 item 1) and use duty batons (Art. 16 section 1 item 2). The Act entrusted the "expert" supervision over city police forces to the Chief Commander of the Police, at the same time awarding the commander with no staff or disciplinary powers towards city police officers. Principles for collaboration between the city police forces and the Police required negotiations between respective commanders and city mayors.

The Rules and Regulations of city police forces required arrangements between the mayor and the Minister of Internal Affairs. To make matters easier, on 8th November 1990, the Minister of Internal Affairs, together with the Plenipotentiary Minister for the Reform of Territorial Authorities issued the communication No. 1/90 concerning the establishment of city police forces and relevant communication with the Minister of Internal Affairs. Appended to the communication was "Sample city police force rules and regulations" document, whose objective was to provide a model for individual rules and regulations, thus reducing the duration of consultations between the mayor and the Minister of Internal Affairs in matters concerning negotiation of the rules.

It must be added that city police forces, as mentioned above, were designed not only as a tool of the local authorities designed to carry out the task of "matters of public order". In the Act on the Police, community authorities were entrusted with a range of powers concerning the Police. The article 3 of the said Act stated that "the organs of territorial state administration and territorial authorities participate in the protection of safety and public order in the scope and along the lines defined in this act, and in other legislation".:

In its section 4, the Art. 6 of the Act stipulated that "Police chief officers (in Polish: *komendanci komisariatów*) are nominated and removed by the Regional (Voievodship) Commander (in Polish: komendant wojewódzki) of the Police to the recommendation from the County Commander (in Polish: *komendant rejonowy*) of the Police, after consultations with an appropriate organ of territorial authorities".

In turn, Art. 9 section 3 stated that "following the recommendation of the appropriate organ of territorial authorities, the Sub-Regional Commander of the Police establishes and liquidates the posts of territorial police, and also nominates and removes the chief officers of territorial police posts."

In turn, Art. 10 obliged Police commanders to report on their activity, and also to inform about the condition of public security and order to appropriate organs of general administration and territorial authorities.

Art. 11 stipulated that in the matters related to the internal organisation and performance of Police tasks, the organs of general administration and territorial authorities may claim that the organs of the Police provide explanations and return matters to a state conforming to legal order.

Art. 13 section 1 stated that "organs of territorial authorities may participate in covering some costs of operation of territorial police".

Making it possible for city mayors to establish, on fully voluntarily bases, city police forces, they were at the same time entrusted with an alternative solution, namely, application for establishment of a post/posts of territorial police and participation in the costs of their maintenance.

Territorial police had a similar scope of authorisation to that of city police forces, and its officers – much like the officers of city police – could perform only "non-administrative and enforcement duties and other duties requiring immediate attention, related to notification about crime and protection of crime scene"(Art. 14 section 1). The officers of territorial police forces could use only certain coercive means, namely, "physical, technical, and chemical means designed to incapacitate or convoy people, and to stop vehicles, and duty batons", and could also use duty dogs (Art. 16 section 3).

Thus, with the Act on Police coming into force, the following model of organs protecting order and security took shape:

PROTECTED VALUES	PROTECTING ORGANS
State security	Office for State Protection (Urząd Ochrony Państwa)
Public (general) security	Police
Public order	Police, territorial police, and special policing forces and guards (including city police)

Thus, in the model of services providing the protection of order and security, city police was entrusted – together with Police, territorial police and other policing services – with the protection of public order.

A word of explanation is due here. Legal language makes use of the word "security" with an array of complementations: "state security", "national security", internal security", "general security", "public security", and "citizen security". Similarly, the word "order" is usually accompanied by a modifying word, as in "public order", "general order", and "legal order". Normative definitions of security and order are lacking. Attempts at defining these notions in the doctrine have frequently been made, which results in an array of obscure doctrinal definitions.

For the purposes of considerations made here, and mindful of the etymology of the word "security" (a state of being free from care and anxiety – and therefore opposed to "threat"), I assume that "state security" is a condition with no threats to the state, "national security" is a state posing no threat to the nation as a whole. In turn, "internal security", "public security", "general security", citizen security", and "security of people" are states or conditions that provide no threat for individual citizens, their groups – be they small or large, and individual institutions of the state (but not the State as a whole). The threat in this case being falling a victim to crime.

On the other hand, I construe the term "order" ("general", "public") as a condition when citizens, their groups, and institutions are not threatened even with offences. It is only the "legal order" that must be construed very broadly, and on a slightly different plane. I interpret it as a condition when all the rules of law are obeyed.

Therefore, the organs aiming at the safeguarding of security are to prevent crime and prosecute it. The organs whose duty is to protect order are to prevent offences and prosecute them.

City police forces found themselves among organs established to protect order, and therefore combat offences. Their number includes Police (whose main objective is, however, to ensure security, with protection of order dealt by the Police only in the scope not managed by other institutions established for that purpose, i.e. policing forces (in Polish: *straże*, literally "guards"). In Poland, there are a number of such policing forces. Their competencies focus on prosecuting, as a rule, offences (exceptionally, and to a limited scope – also of misdemeanour) committed in specific areas, and – as a rule – of specific character, usually related to the particular characteristics of the area in which the policing force operates. Thus, operating in Poland are: Straż Leśna (Forest Police), Straż Łowiecka (Game Protection Force), Straż Parkowa (Park Rangers), Straż Rybacka (Water Bailiffs), Straż Ochrony Kolei (Railway Protection Force), and Straż Miejska (city police forces, literally "City Guards").

The last of the above was devised to maintain order in the cities, that is to prevent the most frequent offences, and prosecution of the perpetrators of the offences already committed.

Similar policing forces exist in many countries of Europe, usually operating as "municipal police". For example, such police forces exist in France in certain municipalities. They consist of 18,000 officers, which is a small fraction of all the police forces, when compared to the 145,000 officers of the National Police and the 101,000 of officers of National Gendarmerie. Very similar to our municipal policing forces is the city police that has operated

in Slovakia since 1991 and is responsible for public order, correct parking of cars in the cities, and for the order in "minor traffic".

During the first year of operation of the Act, city police forces were established in majority of large cities. Today, urban communities without their own city police are exceptions.

Relatively early, as already in 1994, the institutions of territorial police were liquidated. The reasons behind the decision to liquidate territorial police were twofold. First was the reluctance of sub-regional police commanders, who considered the territorial police not fully operational police forces, and a waste of police jobs. Their "not fully operational" quality was actually vested in law, as on the power of the act, its officers were authorised to conduct neither operational intelligence nor investigative and criminal investigative operations, and had limited options for applying coercive means. Brought up in the cult of repressive police, they as a rule underestimated the role of "first contact" officers who the territorial police officers were to be, and also that of criminal prevention and the "community policy" philosophy related to it, which criminal prevention was to be based on.

By the way, the idea of territorial police was revived a few years later, when the institution of district constables (*dzielnicowy*) and districts (*rewir dzielnicowy*) was introduced.

The other factor that decided, as one could believe, about the liquidation of the institution of territorial police was the mass establishment of city police forces, which took over a large share of the duties that the territorial police could play for the community (yet not for the Police). Having established their city police forces, the authorities of cities were no longer interested in participation in co-financing of territorial police.

The good overall experience with the city police forces, and predominantly with the operation of community authorities resulted in the idea to establish such policing forces also in the rural areas. At the same time, the experience gained by the city police forces and the local communities that developed them encourage the broadening of competencies, including the authorisation of the police forces. In the meantime, expanded were also the tasks entrusted to community authorities. As far as in the Act of 8th March 1990 on community authorities, in its original version, the commune was entrusted with 15 own tasks (Art. 7 of the Act), including the task listed in point 14 as the matters of "public order and fire protection", after the successive amendments. The number of such own tasks amounted already to 19, while the point 14 received the following wording: "of public order and security of citizens and fire and flood protection, including the furnishing

and maintenance of the commune's flood prevention equipment storage". Thus, in the area of interest, the tasks of the commune were expanded by the addition of protection of the citizens' security.

In a result, it was recognised that the matters of community police, which the city police had been by the time, require regulation with a separate act of law. This separate acts of law is the Act of 29th of August 1997 on community policing forces (in Polish: *straże gminne*; Polish *Journal of Laws* No. 123 item 779).

A profound change introduced by the Act was the possibility of establishing community policing forces also in rural communes. Moreover, the act unified the organisations and principles of operation of such policing forces within the whole country. By that time, each policing force operated on the power of a separate set of rules and regulations, agreed with the Minister of Internal Affairs, fitting the framework very generally defined by the regulations of the Act on Police. The catalogue of means of coercive means legally available to the policing forces was greatly expanded. Introduced also, even though to a limited scope, was the right to use firearms by policing forces officers. Moreover, they were granted the right to control traffic.

All these changes most probably resulted from the needs discovered in real life. This, however, in no way changes the fact that the basic tasks of city police forces set up in 1990 were constructed so that it could provide the basic tool of the community's authorities in carrying out their tasks, namely, the matters of public order.

Today, the tasks of the authorities of the commune include not only "public order" but also "security of the citizens" and yet the Act on community police forces stipulates in the Article 1 that "Uniformed local authority community policing force, henceforth referred to as the policing force (Polish *straż* meaning "guard") can be established within a commune to protect public order".

What force is to be used by the commune to protect the "security of the citizens"? Definitely the community policing forces cannot be used for such purpose.

It may be worth considering whether to strike the matters of "security of citizens" off the list of tasks of local authorities, or expand the list of the tasks of such a policing force by "protection of security".

By the way, it is high time to put an end – at least in acts of law – with the term "security of citizens" and replace it with the term "security of people". For it is an obligation of the state to protect the life, health, property, and dignity not only of its citizens but also of citizens of other states as well as

stateless people residing within its territory. It is so as the protected value is the human life, health, property, and dignity irrespectively of the citizenship of the said human.

One could, therefore, consider whether it is justified to transform gradually community policing forces into local authority police forces, including the protection of security into the number of their tasks, which must entail entrusting rights to combat crime, and consequently – with furnishing them with the right to conduct operational intelligence and investigative operations, or rather to leave the policing forces with the duty of protecting only order, and furnishing them with the ever better instruments of both legal and technical nature to perform these tasks.

The first would have to entail a profound reorganisation of the Police as such that would have to entrust its tasks to the policing forces. Moreover, also the system of financing these forces would have to change, as the maintenance of policing forces with tasks developed to such an extent would exceed the capacity of municipal budgets.

Personally, I subscribe to the latter solution.

There is a need for a modern force focused on fighting offences, that is the protection of order, in the structure of organs protecting security and order.

The conclusion is not optimistic. As far as in the early 1990s, the tasks of policing forces were adjusted to those of local authorities, today they are not.

The concepts of changes in community policing forces, and ergo successive amendments of the Act on community policing forces (and there have been seven of those) are not aligned with the concept of community authorities and their evolution, and there are no reasons to believe that anyone would bother.

Streszczenie
Realizacja idei Straży Gminnej po 1990 r.

Reforma służb ochrony bezpieczeństwa i porządku publicznego była ważną częścią całej reformy administracji państwa po roku 1989. Idea utworzenia formacji policyjnej podległej samorządowi, niezależnej od policji rządowej zrodziła się na przełomie 1989 i 1990 r. Prace nad reformą samorządową były ściśle skoordynowane z pracami nad reformą organów ochrony bezpieczeństwa i porządku, w efekcie ustawa o Policji (ustawa z 6 kwietnia 1990 r. o Policji, art. 23 i 24) dała prezydentom i burmistrzom miast prawo (nie obowiązek) tworzenia podległych im i przez nich utrzymywanych Straży Miejskich. Uprawnienia publiczno-prawne tych straży dostosowane zostały do zadań samorządu, w szczególności do zadania, jakim z mocy ustawy (art. 7 pkt. 14 ustawy z 8 marca 1990 o samorządzie gminnym) były sprawy „porządku publicznego i ochrony

przeciwpożarowej". W 1997 r. uchwalono ustawę o Strażach Gminnych (ustawa z 29 sierpnia 1997 r. o Strażach Gminnych, Dz.U. Nr 123 poz. 779), która możliwość tworzenia straży rozciągnęła także na tereny gmin wiejskich, utrzymując w zasadzie poprzedni zakres uprawnień publiczno-prawnych. Kolejna nowelizacja ustawy o samorządzie poszerzyła zakres zadań samorządów ze spraw porządku publicznego, także do spraw „bezpieczeństwa obywateli". Z tym poszerzeniem zadań samorządu nie wiązało się poszerzenie uprawnień publiczno-prawnych Straży Gminnych, w szczególności rozciągnięcie ich uprawnień i kompetencji na działania w zakresie ochrony bezpieczeństwa. Działania takie wymagają bowiem wykonywania działań operacyjno-rozpoznawczych czy dochodzeniowo-śledczych, do wykonywania których straże uprawnień nie mają. Obecny prawny wymaga zmiany. Albo z zadań samorządu gminnego należy wykreślić „sprawy bezpieczeństwa obywateli", albo do zadań straży dopisać „ochronę bezpieczeństwa" i dać jej uprawnienia do działania w tym zakresie. Autor opowiada się za rozwiązaniem pierwszym.

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