

Mirośław Karpiuk*

Inspection procedures conducted to ensure mass-event security

Abstract

The subject matter addressed in this article concerns inspection procedures intended to ensure mass-event security. Such inspections are conducted by the executive bodies of a commune or by a Province Governor. The inspection powers include an assessment of the compliance of the running of the mass event (including a higher-risk mass event) with the conditions specified in the permit to hold the event, and – if these conditions are found to be violated by the organisers – the discontinuation of the event. The inspection may also result in issuing a decision prohibiting the organisation of the mass event if, after issuing the initial permit, it is found that there has been a breach of the security conditions which constituted the grounds for its issuing. In addition, the Province Governor may prohibit the organisers from conducting a mass event with public participation or from conducting the mass event on the territory of the Province or its part, or discontinue the mass event while in progress.

Key words: inspection, mass event, security

* Prof. Mirośław Karpiuk, Ph.D. hab., Chair of Administrative Law and Security Studies, Faculty of Law and Administration, University of Warmia and Mazury in Olsztyn, e-mail: miroslaw.karpiuk@uwm.edu.pl, ORCID: 0000-0001-7012-8999.

Introduction

A mass event is a form of participation in artistic, entertainment, or sporting activities. An important factor determining the organisation of a mass artistic and entertainment event, or a mass sporting event, is to ensure security, which concerns not only the participants in such an event, but also other persons, and property. Due to the large number of persons taking part in such events, and the likelihood of the occurrence of threats with potentially serious consequences, the legislator has envisaged certain measures, the fulfilment of which determines the event's organisation. First of all, the mass event must be safe. Safety is to be ensured by the organisers, by way of appointing certain services (information services and order-keeping services), as well as other entities whose tasks are connected with the protection of security (in its various spheres) and public order.

Activities aimed at ensuring the security of a mass event, regardless of its character, must be harmonised, and the flow of information must be prompt and continuous, so that the appropriate countermeasures can be taken, and it would be possible to prevent either the threat itself or its spread, which, in the case of a large number of participants, can have far-reaching consequences, including life- and health-threatening situations. The measures intended to ensure security include inspection procedures performed by the appropriate public-administration bodies.

The principle which is characteristic of public law is the possibility for public authorities to influence the addressees of the standards they establish, and to enforce them¹. As regards mass-event security, the legislator has respected this principle.

Security as a protection subject in the organisation of mass events

Security is a fundamental value protected by the legislator in the case of mass events. However, during such events (as well as immediately before

1 I. Hoffman, *Jedynie teoretyczna możliwość wprowadzenia katastralnego systemu opodatkowania nieruchomości – uregulowania w zakresie podatków od nieruchomości na Węgrzech*, „Analizy i Studia” 2019, nr 2, s. 75.

their commencement or after their conclusion), public order also needs to be ensured along with security. The organisers are primarily responsible for taking the appropriate measures in this respect. Outside the facility or area where a mass event is being organised, security and public order are ensured by the appropriate services.

The principles of the procedures which are necessary to ensure the security of mass events, as well as the conditions for such security, have been the subject of statutory definitions². This results from the need to guarantee the coordination of security measures. Given the fact that the contemporary world is undermining and eroding a range of fundamental values, the significance of security is constantly growing³. Therefore, security will constitute a very important field, which can be observed on the example of mass events, the organisation of which is determined precisely by the requirement of ensuring security⁴.

Security should not be perceived in a static way, as it displays variability determined by the dynamics of the factors which shape it, and the corresponding tasks which are aimed at ensuring security by modifying the surrounding reality⁵. Therefore, security is meant as a response to the threats

2 Article 1 of the Act of 20 March 2009 on Mass Events Security (consolidated text, Journal of Laws of 2019, item 2171), hereinafter „the AMES”.

3 K. Bojarski, *Współdziałanie administracji publicznej z organizacjami pozarządowymi w sferze bezpieczeństwa wewnętrznego w ujęciu administracyjno-prawnym*, Warszawa–Nisko 2017, s. 32.

4 J. Kostrubiec, *The Role of Public Order Regulations as Acts of Local Law in the Performance of Tasks in the Field of Public Security by Local Self-government in Poland*, „Lex Localis – Journal of Local Self-Government” 2021, vol. 19, no. 1, p. 111–129, 116, DOI: [https://doi.org/10.4335/19.1.111-129\(2021\)](https://doi.org/10.4335/19.1.111-129(2021)).

5 W. Lis, *Bezpieczeństwo wewnętrzne i porządek publiczny jako sfera działania administracji publicznej*, Lublin 2015, s. 37. As regards security, see also: M. Karpiuk, *Ubezpieczenie społeczne rolników jako element bezpieczeństwa społecznego. Aspekty prawne*, „Międzynarodowe Studia Społeczno-Humanistyczne. Humanum” 2018, nr 2, s. 67–70; M. Czuryk, D. Dunaj, M. Karpiuk, K. Prokop, *Bezpieczeństwo państwa. Zagadnienia prawne i administracyjne*, Olsztyn 2016, s. 17–19; M. Karpiuk, K. Prokop, P. Sobczyk, *Ograniczenie korzystania z wolności i praw człowieka i obywatela ze względu na bezpieczeństwo państwa i porządek publiczny*, Siedlce 2017, s. 9–21; M. Czuryk, *Bezpieczeństwo jako dobro wspólne*, „Zeszyty Naukowe KUL” 2018, nr 3, s. 15; M. Karpiuk, *Zadania i kompetencje zespolonej administracji rządowej w sferze bezpieczeństwa narodowego Rzeczypospolitej Polskiej. Aspekty materialne i formalne*, Warszawa 2013, s. 77–89; *Aspekty prawne bezpieczeństwa narodowego RP. Część ogólna*, red. W. Kitler, M. Czuryk, M. Karpiuk, Warszawa 2013, s. 11–45; M. Karpiuk, *Konstytucyjna właściwość Sejmu w zakresie bezpieczeństwa państwa*, „Studia Iuridica Lublinensia” 2017, nr 4, s. 10; M. Czuryk, K. Drabik, A. Pieczywok, *Bezpieczeństwo człowieka w procesie zmian społecznych, kulturowych i edukacyjnych*, Olsztyn 2018, s. 7; M. Karpiuk, *Ograniczenie wolności uzewnętrzniania wyznania ze względu na bezpieczeństwo państwa i porządek publiczny*, „Przegląd Prawa Wyznaniowego” 2017, t. 9, s. 10–17; M. Karpiuk, N. Szczęch, *Bezpieczeństwo narodowe i międzynarodowe*,

whose dynamics necessitates substantial activity and commitment on the part of entities in charge⁶. We can speak of its preventive dimension, when the aim is to prevent a threat from occurring, of its actual dimension, when the aim is to combat a given threat, as well as of its consequential dimension, when the threat is neutralised and the appropriate players are obliged to remove its consequences.

A mass event as a legal concept

In Article 3 (1) of the AMES, the legislator defines a mass event as an artistic and entertainment event, or a mass sporting event, with the exception of 1) events organised in theatres, opera, and operetta houses, philharmonics, cinemas, museums, libraries, culture centres, and art galleries, or other similar facilities; 2) events organised in schools and educational establishments by persons managing such schools and establishments; 3) events organised in the context of sports competitions for children and young people; 4) sporting events organised for athletes with disabilities; 5) general sporting events intended to be recreational, public, and free, and organised outdoors; and 6) closed events organised by employers for their employees – if the type of the event corresponds to the intended purpose of the facility or area where it is to be held⁷. This implies that not all artistic and entertainment events,

Olsztyn 2017, s. 13–40; M. Czuryk, *Prawne podstawy bezpieczeństwa narodowego* [w:] *Podstawy bezpieczeństwa współczesnego państwa (podmiotu). Implikacje*, red. J. Pawłowski, Warszawa 2015, s. 533–568; M. Karpiuk, *Miejsce samorządu terytorialnego w przestrzeni bezpieczeństwa narodowego*, Warszawa 2014, s. 28–34; M. Czuryk, *Właściwość Rady Ministrów oraz Prezesa Rady Ministrów w zakresie obronności, bezpieczeństwa i porządku publicznego*, Olsztyn 2017, s. 9; M. Karpiuk, *Właściwość wojewody w zakresie zapewnienia bezpieczeństwa i porządku publicznego oraz zapobiegania zagrożeniu życia i zdrowia*, „Zeszyty Naukowe KUL” 2018, nr 2, s. 227–228; M. Bożek, M. Karpiuk, J. Kostrubiec, K. Walczuk, *Zasady ustroju politycznego państwa*, Poznań 2012, s. 67–68; M. Karpiuk, *Prezydent Rzeczypospolitej Polskiej jako organ stojący na straży bezpieczeństwa państwa*, „Zeszyty Naukowe AON” 2009, nr 3, s. 389–390; M. Czuryk, *Supporting the development of telecommunications services and networks through local- and regional-government bodies, and cybersecurity*, „Cybersecurity and Law” 2019, nr 2, s. 41–43; M. Karpiuk, *Activities of the local government units in the scope of telecommunication*, ibidem, nr 1, s. 45.

⁶ See: A. Pieczywok, *Działania społeczne w sferze bezpieczeństwa wewnętrznego*, Lublin 2018, s. 13; A. Pieczywoki, *Idee bezpieczeństwa człowieka w teoriach i badaniach naukowych*, Bydgoszcz 2021, s. 20–21.

⁷ The exceptions listed above are not of an unconditional character; therefore, they are not subject to exclusion merely due to the fact that they are held in a specific location or

or sporting events, even if they meet the quantitative criteria as to the number of participants, will have the status of a mass event. This provision makes the appropriate exclusions, but this list should not be interpreted as being extensive, in view of the principle of regimentation manifested in the necessity to obtain a permit to organise a mass event from an executive body of a commune government in charge of the place of its planned organisation.

The legislator understands a mass artistic and entertainment event as an event of an artistic or entertaining character, or as an organised public viewing of television broadcasts on large screens or devices enabling the acquisition of a diagonal image exceeding 3 m, which is to be held 1) in a stadium, or in another facility which is not a building, or in an area enabling a mass event to be held, where the number of places for participants made available by the organisers, and determined in accordance with the provisions of construction law and fire-safety regulations, is at least 1000; or 2) in a sports hall or another building enabling a mass event to be held, where the number of places for participants, made available by the organisers, and determined in accordance with the provisions of construction law and fire-safety regulations, is at least 500. This definition is provided in Article 3 (2) of the AMES. The criterion determining the mass character of an event is the number of places for participants made available by the organisers. This number cannot be defined freely by the organisers, as the organisers are bound, in this respect, by both the provisions of construction law and fire-safety regulations.

In Article 3 (3) of the AMES, the legislator also provides a definition of a mass sporting event, which is a mass event aiming at sports competition, or the popularisation of physical culture, which is held 1) in a stadium, or in another facility which is not a building, where the number of places for participants made available by the organisers, and determined in accordance with the provisions of construction law and fire-safety regulations, is at least 1000, and, in the case of a sports hall or another building enabling a mass event to be held, at least 300; 2) in an area enabling a mass event to be held, where the

have a specific nature (they have been named as such), or are attended by specific persons. It is necessary that the type of event in question corresponds to the purpose of the facility or area where it is to be held. It should be, nonetheless, emphasised that the classification of a given location (facility) as, for instance, a culture centre, or a theatre, is not determined only by its name, as this would be a simple way to abuse and circumvent the provisions of the AMES, but by the actual character of the facility (area), and the specificity of the event corresponding to the name given to it, C. Kąkol, *Komentarz do art. 3 ustawy o bezpieczeństwie imprez masowych*, LEX 2017.

number of places for participants made available by the organisers is at least 1000. In the case of mass sporting events, when it comes to the organisation of such events in buildings, there are stricter quantitative criteria than in the case of mass artistic and entertainment events. The former are considered mass events even when planned for 300 participants, which results in a permit being required prior to holding them (in the case of artistic and entertainment events, this number is 500).

As regards inspection powers, it is also important to define the notion of a higher-risk mass event, in the case of which the security threat is higher than in the case of a mass event without such a risk being identified. The definition of a higher-risk mass event is provided in Article 3 (5) of the AMES. More specifically, the legislator has defined this term as a mass event during which, based on information on the anticipated risks or previous experience concerning the participants' behaviour, there is a concern related to the occurrence of acts of violence or aggression⁸. The protection of security in such cases must, therefore, be increased, so there will be additional obligations binding on the organisers (including, *inter alia*, increased numbers of information and security personnel).

Security inspections at mass events

Security inspections at mass events, like any other inspections, entail comparing the condition „as is” with the required status⁹. Inspections are an important aspect of public administration activities. Their purposes are to improve the quality of the performance of public tasks, as well as to optimise costs. Such inspections constitute an important factor protecting against abuses in the public domain, as well as facilitating their detection.

The inspection powers vested in the executive bodies of a commune (acting as inspecting bodies) in the case of higher-risk mass events, and mass events without such a status, are inconsistent. The legislator, in Article 31 (1) of the

⁸ Concerns related to the occurrence of acts of violence or aggression refer to the duration of the mass event ☐ from the moment the facility or area is made available to the participants in the mass event until the moment they leave the facility or area, *ibidem*.

⁹ As regards inspections, see J. Kostrubiec, *Kontrola administracji publicznej [w:] Administracja publiczna i prawo administracyjne w zarysie*, red. M. Karpiuk, J. Kowalski, Warszawa-Poznań 2013, s. 329.

AMES, categorically stated that the body should inspect the compliance of a given higher-risk mass event in terms of the conditions set out in the permit to hold that event. The Commune Head (Mayor) may, therefore, not refrain from performing such an inspection, as it is his/her expressly defined statutory obligation which arises from the fact that at any such event acts of violence or aggression are very likely to occur, making it vital to take the appropriate measures, including those of a far-reaching intervention nature, including the discontinuation of the event.

In the case of those mass events which are not higher-risk events, the executive body of a commune is not obliged to inspect the running of the event as to whether it complies with the conditions set out in the permit. While Article 31 (2) of the AMES provides for such inspection to be exercised, it is not expressly required. In view of the above, the inspecting body may exercise such a right, especially if any doubts arise as to whether the organisers have met the conditions specified in the administrative decision authorising the organisation of a mass event, but it is not obliged to do so.

A permit to organise a mass event has a formal nature, and includes 1) the name of the organisers; 2) the type of the mass event; 3) the name of the mass event; 4) the conditions for conducting the mass event, including a) the place where it is to be held, b) the times of its commencement and termination, c) the maximum number of persons who may participate in it, d) the number of members of security and information personnel, and e) information on the installation of audio- and video-recording equipment. These are elements listed in Article 29 (2) of the AMES¹⁰. In addition, the provisions of the Code of Administrative Procedure (CAP)¹¹ defining the elements in such decisions are equally applicable. Under Article 107 § 1 of the CAP, the decision should contain 1) the name of the public-administration body; 2) the date of issue; 3) the name(s) of the party or parties; 4) the legal basis referred to; 5) the ruling; 6) a factual and legal justification; 7) an advisory notice as to whether and how an appeal may be brought, the right to waive the entitlement to an appeal, and the consequences thereof; 8) the signature, name, and position of the person authorised to issue the decision, and where the decision was issued

¹⁰ The organiser of a mass event remains the addressee of the ruling based on the provisions of the AMES, and thus the only party to the administrative proceedings in this respect Wyrok WSA z dnia 5 czerwca 2012 r., II SA/Po 9712, LEX nr 1377085.

¹¹ Ustawa z dnia 14 czerwca 1960 r. – Kodeks postępowania administracyjnego, t.j., Dz.U. 2018, poz. 2096, z późn. zm.

as an electronic document – a qualified electronic signature; 9) in the case of a decision in respect of which an action may be brought before a common court, an objection to the decision, or a complaint before an administrative court – an advisory notice as to the admissibility of an action, an objection to the decision or complaint, and the amount of the fee for an action, or the entry of a complaint, or an objection to the decision, if it is of a fixed nature, or the basis for calculating the fee or entry on a relative basis, as well as the possibility of the party to apply for exemption from costs or for granting the right to assistance¹². The permit should thus contain the elements arising both from Article 29 (2) of the AMES and from Article 107 § 1 of the CAP.

As stipulated in 107 § 3 of the CAP, the factual justification of the decision should include the facts that the body regards as proven, the evidence being relied on, and the reasons for which other evidence has been treated as not authentic and without probative force, whereas the legal justification should include the legal authority for the decision with reference to the appropriate law. The motives, as well as the reasoning, of the body submitting the assessment and the process of the substantiation of the administrative legal relation in a given case, should be presented in the justification of the decision in a consistent, logical, and comprehensive manner, so that it would be possible to deduce the standpoint taken by the body¹³.

12 Article 107 § 1 of the CAP defines the elements of a standard decision; however, it should be borne in mind that more specific regulations may also require that other elements be additionally included in the decision, A. Wróbel, *Komentarz do art. 107 Kodeksu postępowania administracyjnego*, LEX 2018. The form of an administrative decision should be attributed to each and every settlement of an individual administrative matter in which a substantive or procedural rule of administrative law is specified in further detail. It should be stressed that the classification of a given act as an administrative decision is not influenced by the name of that act, but by its content, which means that a letter may also, in reality, constitute an administrative decision whose unlawfulness may be proven by way of filing an appeal by the addressee of such a letter. The elements which are indispensable to regard a letter as an administrative decision are as follows: the name of the administrative body, the name of the addressee, the decision on the merits of a given case, and the signature of the person representing the issuing body, Wyrok WSA z dnia 8 listopada 2018 r., III SA/Łd 504/18, LEX nr 2582130.

13 Wyrok WSA z dnia 30 października 2018 r., II SA/Op 355/18, LEX nr 2583499. The justification is a very important constituent of an administrative decision, as its purpose is to substantiate the decision, and it constitutes the dispositive part thereof. The party is entitled to know the arguments and rationale behind the decision, as otherwise it has no possibility to defend its legitimate interests Wyrok WSA z dnia 24 października 2018 r., IV SA/Po 759/18, LEX nr 2584846.

When carrying out the inspection activities related to the compliance of the running of a mass event with the conditions specified in the permit to hold that event, the commune Head (Mayor), pursuant to Article 31 (2a) of the AMES, may use the personnel and resources of the locally responsible district (regional, municipal) Police Chief, district (municipal) Fire Chief of the State Fire Service, the dispatcher of medical rescue teams, and the State Sanitary Inspector. These entities, within the framework of the administrative proceedings concerning the issuing of a permit to organise a mass event, formulate opinions on the level of personnel and resources needed to ensure the security of the mass event, as well as on any reservations concerning the technical condition of the facility (area), and anticipated threats. The right vested in the executive body of a commune to use the personnel and resources of these entities is intended to ensure the security of a mass event if the controlling body, through its own capabilities, would not otherwise be able to do so.

In connection with the inspection, the executive body of a commune, pursuant to Article 31 (3) of the AMES, has the right to 1) demand information, documents, and data from the organisers, to the extent necessary to carry out the inspection; 2) freely enter the premises of the mass event, and other premises which are directly connected with the staging of the mass event, as well as to inspect those premises; and 3) demand that persons acting for and on behalf of the organisers provide information in oral and written form within the scope of the inspection being carried out. These rights allow the inspecting body to effectively undertake measures within the scope of ensuring the security of the mass event. Nonetheless, inspections, due to their interventive character, may not serve as instruments for the implementing of the municipal security policy by a monocratic body of a basic local-government unit, as they must be performed in accordance with the rule of law. Therefore, all activities must be connected with the subject matter of the inspection, and also with ensuring security, which involves, *inter alia*, guaranteeing that the running of a mass event (including a higher-risk gathering) complies with the conditions set out in the permit to hold that event.

In the event of establishing that the organisers have failed to meet the conditions specified in the permit, the inspecting body, acting pursuant to Article 31 (4) of the AMES, may issue a decision on the discontinuation of the mass event, making it immediately enforceable, and it shall immediately notify the appropriate Province Governor of this fact. The decision is to be delivered to the organisers within 7 days from the date of the discontinuation of the event. The legislator allows the inspecting body to use a very rigorous

measure, i.e. the discontinuation of a mass event, which is done by way of an administrative decision, while it does not specify whether it should be issued orally or in writing. The underlying rule of administrative proceedings is that decisions are issued in writing (in the form of an electronic document), but it might turn out that the inspecting body has no opportunity to proceed in this form, and the threat to security will be so substantial, and at the same time dynamic, that it will prove necessary to take an immediate decision on the discontinuation of the mass event. It seems justified for the commune Head (Mayor) to be able to make such a decision orally, which is evidenced both by the need to immediately discontinue the mass event due to a security threat, as well as by the further part of the provision according to which such a decision shall be delivered to the organisers within 7 days from the date of discontinuing the event. The decision eventually delivered to the organisers should be in writing, so that the organisers could thoroughly familiarise themselves with the inspecting body's arguments. *De lege ferenda (on the basis of the law as it ought to be)* this provision should be amended to clearly specify whether it is permissible to discontinue a mass event by way of an oral administrative decision.

In issuing a decision on the discontinuation of a mass event, the inspecting body also takes into consideration the security threat which can result in the discontinuation of that event. This is a statutory premise which must be fulfilled when making the decision, as this obligation was introduced by way of Article 31 (4a) of the AMES. The commune Head (Mayor) must consider whether the continuation of the mass event, or its discontinuation, would trigger a higher threat. The discontinuation of a mass event might anger the crowd, who could express their disapproval of such a decision by resorting to acts of aggression and violence, and this, in turn, might be difficult to bring under control.

If it were found that the organisers have infringed the security conditions of a mass event, the entities in charge of issuing opinions (the district, or possibly regional, municipal Police Chief; the district, or possibly municipal, Chief of the State Fire Service; the dispatcher of medical-rescue teams; and the State Sanitary Inspector) may request the appropriate body to discontinue the event. Such a right vested with those entities arises from Article 31 (5) of the AMES.

There is a possibility to undertake preventive measures to ensure security already after the permit has been granted, but before the commencement of the mass event. This possibility arises from Article 32 of the AMES, pursuant to which the inspecting body issues an administrative decision prohibiting the staging of a mass event if it were found, after the permit has been granted,

that the security conditions providing the grounds for its issuance have been violated. The legislator grants the executive body of a commune, acting as the inspecting entity, a wide range of intervention-related powers allowing for preventive, as well as ongoing, responses. It might turn out that while at the moment of granting the permit the actual status would not indicate any security threat which would result in the refusal to issue the permit, but after the positive decision is obtained, new circumstances might arise which, in all likelihood, will negatively affect security during the mass event concerned, thus making it necessary to take some remedial steps in the form of the prohibition to hold the event – as an *ex ante* inspection.

The decision prohibiting the organisation of a mass event may be appealed against to the local-government appeals court. The above authorised instance is defined under Article 33 (1) of the AMES. Indication of the local-government appeals court as the second-instance body in this provision appears to be redundant, as Article 4 of the AMES expressly states that the proceedings in cases specified in the AMES shall be conducted in accordance with the provisions of the CAP, unless the provisions of the AMES provide otherwise, and in Article 17 (1) of the CAP, the procedural legislator provides that local-government appeals courts are higher-rank bodies in relation to local-government units, unless more specific regulations provide otherwise. In view of the above, Article 33 (1) of the AMES implies that a different solution was adopted in the CAP, but this is not, in fact, the case.

An appeal does not require a detailed justification. It is sufficient that the appeal shows the party's dissatisfaction with the decision which has been issued. This deformalisation is stipulated in Article 128 of the CAP¹⁴. Therefore, the organisers do not have to provide arguments for their standpoint, but it is sufficient for the content of the appeal to clearly show that they do not agree with the decision of the inspecting body prohibiting the organisation of the mass event. The lack of formal requirements for the appeal, as stipulated by the law, should not, however, lead to the party's withdrawing from expressing allegations in such a pleading. If they are included in the appeal, the body

¹⁴ The appeal proceedings are initiated through the party's procedural act, which corresponds to the filing of an appeal. For this action to have legal effect, certain requirements need to be met regarding its form, content, mode and time limit. The fact that, under Article 128 of the CAP, an appeal does not require a detailed justification implies that it is of a deformed character, B. Adamiak [w:] B. Adamiak, J. Borkowski, *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2008, s. 595.

considering the appeal should refer to them, and, in the absence thereof, it examines the matter as to its merits within its authority.

The local-government appeals court has 4 days to consider an appeal against any decision prohibiting the conduction of a mass event. This time limit is defined under Article 33 (1) of the AMES. In principle, Article 35 § 3 of the CAP provides that the settling of the case in appeal proceedings is to take place within one month of the receipt of the appeal. The shortening of the time limit for the consideration of the appeal sometimes gives the organisers the opportunity to organise a mass event, if, for instance, the local-government appeals court retracts the appealed decision, and decides on the merits of the case by granting the appropriate permit, and the time scheduled for the organisation of that mass event has not yet passed.

Pursuant to Article 129 of the CAP, an appeal against a decision shall be brought to the proper appeal body via the entity which issued the decision¹⁵ within 14 days of the party's being served with the decision, and, if the decision was communicated to the party orally, within 14 days of that date; however, other regulations might set a different time limit for bringing an appeal. Specific regulations, in this case the AMES, do not provide for a different time limit for filing an appeal, but a different time limit for its consideration.

As the time limit for filing an appeal is a statutory deadline, it may not be extended or shortened arbitrarily by the public-administration body. This is a procedural time limit calculated in accordance with the provisions of the CAP, and at the same time a mandatory time limit, the expiry of which is considered ex-officio by the appellate authority. In consequence, if the party concerned has failed to observe the 14-day time limit for filing the appeal, and the authority has not restored the time limit, the decision issued in the first instance is considered final¹⁶.

In addition to the commune Head (Mayor), the inspection procedure launched to guarantee the security of a mass event, ending with an administrative decision, are also conducted by the Province Governor.

15 Given the fact that the appeal is filed via the body which issued the decision, two objectives can be achieved. First, the body whose decision has been challenged by the filing party can review its own decision and amend it. Second, the party filing the appeal is not obliged to determine which body has the jurisdiction over the appeal and bears no negative legal consequences for misidentifying the appellate authority – the appeal should be remanded to the appropriate authority by the authority to which it was filed, P.M. Przybysz, *Komentarz do art. 129 Kodeksu postępowania administracyjnego*, LEX 2017.

16 Wyrok WSA z dnia 19 grudnia 2018 r., II SA/Go 585/18, LEX nr 2608041.

Pursuant to Article 34 (1) of the AMES, in the case of a negative assessment of security and public order in relation to a mass event being planned or conducted, the Province Governor, by way of an administrative decision, may 1) prohibit the staging of the mass event with public participation in the entire facility or in its separate sectors¹⁷; 2) introduce, for a definite or an indefinite period, a prohibition on the putting on of mass events by the organisers on the territory of the Province, or its part. It is an *ex ante* control procedure, so the instruments employed will be of a preventive character – the prohibition of the staging of a mass event with public participation or the prohibition of the staging of any mass event. This prohibition cannot apply beyond the territory of the Province within which the Province Governor, as an inspecting body, exercises jurisdiction. Therefore, the Province Governor cannot discontinue the mass event while it is in progress.

A negative assessment of security and public order should be viewed as the premise for issuing a decision prohibiting the organisation of a mass event with public participation. The premise includes determination of two elements of the factual state: a negative assessment of the security status and public order. As determining the occurrence of the first element of the factual state was not limited either as to the form or as to jurisdiction of the authority, the power to make a negative assessment is vested in the Province Governor on the basis of his/her own findings. The notions of security and public order relate to concepts that have not been defined by law. What is more, their precise determination is hardly possible. An assessment of security of a mass event is based primarily on information obtained from the bodies appointed to safeguard these values¹⁸.

In assessing the premises for issuing a decision prohibiting the organisation of a mass event with public participation, the appropriate body should

17 The purpose of the provision formulated in Article 34 (1) (1) of the AMES is to ensure public order and security during mass eventp. It is also meant as a preventive measure in order to discipline not only the organisers of mass events, but also their participants, and to eliminate negative behaviours which are likely to re-occur in the future, Wyrok NSA z dnia 20 lipca 2012 r., I OSK 1238/12, LEX nr 1217359. Both the procedure for issuing a permit to organise a mass event with public participation and the procedure for prohibiting such an event only pertain to the legal situation of the organiser, Wyrok NSA z dnia 20 lipca 2012 r., I OSK 1153/12, LEX nr 1260050. The prohibition stipulated in Article 34 (1) (1) of the AMES concerns an expressly specified entity, namely the organiser of a mass event who has been prohibited from organising such events with public participation, Wyrok NSA z dnia 20 lipca 2012 r., I OSK 1238/12, LEX nr 1217359.

18 Wyrok NSA z dnia 21 czerwca 2012 r., I OSK 691/12, LEX nr 1216570.

take into account all the circumstances which indicate future behaviour of potential participants in such an event, in the context of ensuring security and public order in relation to the planned event. The circumstances arising from the previous behaviour of the participants in the planned event at already conducted mass events, in particular of the same nature, should also be taken into consideration¹⁹.

A copy of the decision prohibiting the organisation of a mass event with public participation or decision prohibiting the conduction of mass events by the organisers on the territory of the Province or its part – immediately after its issue – is sent by the Province Governor, pursuant to Article 34 (2) of the AMES, to the district (regional, municipal) Police Chief, the district (municipal) Fire Chief of the State Fire Service, the dispatcher of medical-rescue teams, and the State Sanitary Inspector, i.e. entities in charge of specific types of security (public, health, sanitary), and fire protection, whose values are to be safeguarded at the mass event.

The decision of the Province Governor prohibiting the organisation of a mass event may be appealed against to the Minister in charge of internal affairs, who is obligated to consider the appeal within 14 days from the date of its submission. This mode is defined under Article 34 (3) of the AMES. Pursuant to Article 17 (2) of the CAP, the appropriate Minister – more specifically, as regards the security of mass events, the Minister of internal affairs – acts as a higher-level authority than the Province Governor.

An appeal against the Province Governor's decision prohibiting the organisation of a mass event with public participation, in the whole facility, or in its separate sectors, or against the decision prohibiting the conducting of mass events by the organisers on the territory of a Province, or its part, whether for a definite or an indefinite period, does not result in suspending its implementation. This principle arises from Article 34 (4) of the AMES. It is an exception to the principle stipulated in Article 130 § 2 of the CAP, in the light of which bringing an appeal within the time limit suspends the implementation of the decision. A specific provision, i.e. Article 34 (4) of the AMES, will thus prevail over the more general provision, which in this case is Article 130 § 2 of the CAP.

Under Article 34a of the AMES, the Province Governor may also, along with preventive measures, take certain ongoing inspection measures in the running

of a mass event. More specifically, the Province Governor may, by way of an administrative decision, ban the mass event if its continuation might pose, to a significant extent, a threat to human life or health, or to property of significant size, and the actions taken by the organisers are insufficient to ensure security and public order. In issuing such a decision, the Province Governor should also take into consideration any threat to security which might result in the discontinuation of the mass event. The decision on the discontinuation of a mass event is immediately enforceable, and the Province Governor must promptly communicate it both to the organisers of the mass event and to the district (regional, municipal) Police Chief, district (municipal) Fire Chief of the State Fire Service, the dispatcher of medical-rescue teams, and the State Sanitary Inspector. The decision is to be delivered to the organisers within 7 days from the date of discontinuing the event.

The legislator does not permit any discretionary action by the Province Governor as regards the discontinuation of mass events. This can only be done if the following circumstances are found to jointly occur: 1) its further course might pose, to a significant extent, a threat to human life or health, or to property of significant size; 2) the actions taken by the organisers are insufficient to ensure security and public order; and 3) the security threat which might result in the discontinuation of the mass event would not exceed the threat which would occur if the event were continued. Within the limits so determined, the Province Governor issues an administrative decision regarding the banning of the mass event.

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Postępowanie kontrolne prowadzone w sprawie zapewnienia bezpieczeństwa imprezy masowej

Streszczenie

Problematyka podjęta w artykule dotyczy działań kontrolnych, których celem jest zapewnienie bezpieczeństwa imprezy masowej. Kontrolę taką przeprowadza organ wykonawczy gminy bądź wojewoda. Obejmuje ona m.in. ocenę zgodności przebiegu imprezy masowej (w tym imprezy masowej podwyższonego ryzyka) z warunkami określonymi w zezwoleniu na jej przeprowadzenie, a w przypadku stwierdzenia niespełnienia przez organizatora tych warunków przerwanie takiej imprezy. Efektem kontroli może być również wydanie decyzji o zakazie przeprowadzenia imprezy masowej, jeżeli po wydaniu

zezwolenia zostanie stwierdzone, że doszło do naruszenia warunków bezpieczeństwa dających podstawę do jego wydania. Z kolei wojewoda może zarówno zakazać przeprowadzenia imprezy masowej z udziałem publiczności, jak i wprowadzić zakaz przeprowadzania przez organizatora imprez masowych na terenie województwa lub jego części czy przerwać imprezę masową w trakcie jej trwania.

Słowa kluczowe: kontrola, impreza masowa, bezpieczeństwo