

RESIGNATION OF VOIVODSHIP MARSHAL FROM THEIR FUNCTION IN THE LIGHT OF VOIVODSHIP SELF-GOVERNMENT ACT

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The Voivodship Self-Government Act of 5 June 1998¹ stipulates that ‘if a voivodship marshal tenders a resignation, its acceptance occurs by a simple majority of votes’ (Article 38 para. 1). Accordingly, this article gives the voivodship marshal the possibility of ‘resigning’ from their function. Article 37 para. 4 likewise explicitly states that a voivodship marshal may make a ‘statement’ regarding their ‘resignation’. The Act also regulates the possible case when a ‘resignation’ is ‘tendered’ by a member of the voivodship board other than its chair (Article 40 para. 1). Similarly, the chair or deputy chair of the voivodship assembly may also ‘tender a resignation’ (Article 20 para. 5). At the same time, no temporal restrictions were imposed on ‘tendering a resignation’, and consequently there are no obstacles for making this move at any time following the election.

The cited Act does not offer a legal definition of ‘resignation’. The provisions referred to above suggest that a resignation is ‘tendered’ (as evidenced by the words ‘if a voivodship marshal tenders a resignation’), and also define who is entitled to ‘tender’ the relevant statement (chair and deputy chair of the voivodship assembly, voivodship marshal, member of the voivodship board other than its chair). In this manner, the law names both the object (‘tendering’ and ‘resignation’) and the subject of these provisions. It should be noted that the Act distinguishes between ‘tendering a resignation’ and its ‘acceptance’ (Articles 38 para. 2, 40 para. 1, and 20 para. 5 VSGA), which means that when a statement is tendered by the eligible person, this triggers a procedure ending with ‘acceptance of resignation’. If a resolution

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¹ Consolidated text, Dz.U. of 2019, item 512, as amended; hereinafter VSGA, the Act.

on this matter is not adopted, the Act provides for the legal fiction of 'acceptance of resignation' (Articles 38 para. 3, 40 para. 2, 20 para. 6 VSGA). The statement of 'tendering a resignation' does not, therefore, have the legal consequence of bringing the voivodship marshal's term to an end.

In the absence of the legal definition of 'resignation', one should first resort to a linguistic interpretation, which consists in determining the meaning and scope of phrases used in the legal text in relation to the language in which they have been expressed.² As evidenced by the Dictionary of the Polish Language, in Polish 'resignation' means 'renouncing or forbearing to do something',³ as well as 'withdrawing from something', 'stepping back'.⁴ Within this meaning, the dictionary provides example collocations of the word such as 'resign from a post, a job, a function', distinguishing 'tendering a resignation' from 'accepting a resignation'.⁵ There are no grounds for assuming that the word 'resignation' used in the Voivodship Self-Government Act should be construed otherwise. Following the directive of terminological consistency (resulting in the prohibition of homonymous interpretation),⁶ this term should be understood identically whenever used in the Voivodship Self-Government Act.⁷ This is because a notion should have the same meaning in all contexts in which it appears.⁸

In light of the above comments, the resignation of the voivodship marshal referred to in Articles 38 para. 1 and 37 para. 4 VSGA means renouncing their function. With respect to 'renouncing', the Dictionary of the Polish Language highlights that such a statement is made 'voluntarily'.⁹ Therefore, legal literature authors are right in stressing that Article 38 VSGA permits the marshal to tender a resignation, i.e. voluntarily declare their will to step down from their position.¹⁰ However, the Act does not enumerate the circumstances that justify tendering a resignation. Literature authors, favourably assessing the effective regulation, note that some personal circumstances may cause a clash between exercising this function and other obligations for legal (such as being elected to parliament or appointed a local government appeal board member) or factual (such as health condition, family circumstances, other employment offers) reasons, adding that in the latter case the provision allows one to leave their office in a honourable way, without waiting for resulting conflicts to appear that will affect the marshal's work as a public administration body and the chair of the voivodship board.¹¹ This view is partially dispensable because, pursuant to the currently effective wording of Article 31 para. 3 VSGA, the office of a voivod-

² K. Opalek, J. Wróblewski, *Zagadnienia teorii prawa*, Warszawa 1969, p. 246.

³ <https://sjp.pwn.pl/sjp/rezygnacja;2574255.html> (accessed 13.01.2020).

⁴ *Słownik Języka Polskiego*, M. Szymczyk (ed.), Vol. III, Warszawa 1984, p. 56.

⁵ *Ibid.*

⁶ Cf. S. Wronkowska, M. Zieliński, *O korespondencji dyrektyw redagowania i interpretowania tekstu prawnego*, *Studia Prawnicze* 3–4, 1985, p. 310.

⁷ Cf. L. Morawski, *Wykładowia w orzecznictwie sądów. Komentarz*, Toruń 2002, p. 145.

⁸ Cf. J. Wróblewski, *Sądowe stosowanie prawa*, Warszawa 1988, p. 134.

⁹ <https://sjp.pwn.pl/slowniki/zrzec-sie.html> (accessed 13.01.2020); *Słownik Języka Polskiego*, *supra* n. 4, p. 1061.

¹⁰ Cz. Martysz, [in:] B. Dolnicki (ed.), *Ustawa o samorządzie województwa. Komentarz*, Warszawa 2012, thesis 1 to Article 38.

¹¹ *Ibid.*

ship board member cannot be combined with that in another self-government body or with employment in government administration, or with being elected to either chamber of parliament (first sentence); the office in the voivodship board terminates on the date of election or employment (second sentence). Accordingly, when a member of the voivodship board (including its executive) is elected a member of parliament, termination of office in the voivodship board occurs *ex lege* on the election date. The Act therefore recognizes the mechanism of *ex lege* termination of office in the voivodship board and links this to election to parliament (as of the election date) or employment in government administration (as of the employment date). In such cases, the voivodship marshal (or another board member – the Act does not distinguish between them) does not tender a resignation referred to in Article 38 para. 1 VSGA, because they cease to be a voivodship board member (and thus also an executive) as of the date of election or employment referred to in Article 31 para. 3 VSGA. Accordingly, the Act distinguishes between resignation from a position and termination of office in the voivodship board, which occurs by operation of law as a result of the circumstances listed in Article 31 para. 3 VSGA. Putting Articles 38 para. 1 and 31 para. 3 side by side clearly shows that resignation is voluntary, being subject to the will of the resigning person, while termination of office in the voivodship board occurs regardless of the member's will, as a consequence of a specific legal fact.

The motives for tendering a resignation are not important (thus being legally irrelevant), and the resigning person need not make any statement (release) in this respect, as this is not included in the scope of resignation itself as understood under the Voivodship Self-Government Act. As already noted, resignation is an act of renouncing a function and, from a linguistic viewpoint, this notion does not require the resigning person to reveal their motivation. Speaking colloquially, resignation is not tied to any rational explanation and needs not be justified in any manner, but it is a free exercise of will. Its voluntary nature, in turn, involves exercising one's will, without any compulsion¹² and without being obliged to reveal the conditions which have affected and prompted this act. Such an obligation would be essentially contrary to freely exercising one's will, because the need to reveal the motivation underlying one's decision appears to involve a measure of compulsion and might affect the decision itself, since one would consequently have to disclose their reasons. Motivation indeed plays a role in making a decision to resign, but only as the internal thought process of the resigning person who may exercise their right due to being guided by various considerations. The Act does not explicitly require that such considerations be revealed. Accordingly, since the Act does not specify what reasons may underlie a resignation, it appears logical that the resigning person is under no obligation to explain what circumstances have influenced their decision. Consequently, it is also logical that the Act does not provide for any procedure to assess the reasonableness of the statement made by the voivodship marshal, as no measuring standard (statutory reasons for tendering a resignation) exists in this case.

¹² <https://sjp.pwn.pl/sjp/dobrowolny;2452715.html> (accessed 13.01.2020); *Słownik Języka Polskiego*, M. Szymczak (ed.), Vol. I, Warszawa 1983, p. 405.

Hence, in order to be valid, the act of resignation does not require anything but the voivodship marshal expressing their will to cease exercising their previous function. When tendering a resignation, the voivodship marshal does not need to convince anyone that it is reasonable, because they do not submit an application to be released from a function but a statement. Although the mere submission of this statement does not have the legal consequence of termination of office in the voivodship board and termination of the employment relationship with the voivodship marshal (argument under Article 38 para. 2 VSGA), the voivodship assembly cannot prevent this effect from occurring, as unequivocally follows from Article 38 para. 3 VSGA. The effect, then, manifests itself regardless of the position of the voivodship assembly. The will of the voivodship marshal is therefore decisive and is not subject to any kind of evaluation. Even if the voivodship marshal resolves to reveal the motives behind their decision (which by the way need not be the actual motives), their statement in this respect is not an integral part of the resignation and cannot form the basis for the voivodship assembly's resolution referred to in Article 38 para. 2 VSGA.

The above interpretation is additionally supported by the wording of Article 37 para. 2 VSGA, according to which a motion to dismiss the voivodship marshal must be made in writing together with a justification of the reasons for dismissal and is subject to an opinion of the audit committee. In turn, Article 37 para. 3 VSGA stipulates that the voivodship marshal is dismissed by a majority of at least three-fifths of votes of the statutory composition of the assembly, cast in a secret vote. The dismissal vote is held by the voivodship assembly after examining the opinion of the audit committee during the session taking place after the session when the motion for dismissal has been filed, not earlier, however, than after one month after filing the motion. If the motion to dismiss the marshal did not obtain the required majority of votes, another motion cannot be filed until six months have elapsed from the previous vote. With respect to dismissing the voivodship marshal, the Act requires therefore that the motion contain the reason for dismissal and a justification why such a decision is reasonable. No such measure is provided for in case of resignation. In addition, it should be stressed that the statement of the voivodship marshal to resign from their position is not subject to an opinion of the audit committee. This is because the Voivodship Self-Government Act does not provide for an opinion on the exercise of will of the person entitled to resign. Such an opinion is devoid of any purpose because neither the audit committee nor the voivodship assembly are formally capable of affecting or prompting it. A statement of the voivodship marshal to resign from their function is a legal fact, whose occurrence is dependent on a single and exclusive prerequisite, namely the will of the entitled person to tender a resignation which, if exercised, is not subject to assessment by the audit committee and the voivodship assembly. While a motion to dismiss the voivodship marshal has the nature of a proposal, their resignation statement must be classified as a firm and definite statement that determines the wording of the voivodship assembly's resolution (Article 38 para. 2 VSGA), ultimately producing effects compliant with the statement contents (Article 38 para. 3 VSGA).

In practice, as noted above, the resignation may be caused by health, family, professional or other circumstances of the resigning person. It may also result from

purely political motives, for example, when the voivodship marshal comes to believe that further cooperation with the voivodship assembly is not possible, or it may take place as a result of losing the support of the voivodship assembly. Other causes may include questions of honour or even emotions, for example, when the assembly refuses to support proposed resolutions regarded as the marshal's priorities. The voivodship marshal may also tender a resignation in connection with public criminal, including corruption, charges, or when such charges are brought against the executive in penal proceedings. In situations like these, the voivodship marshal has no statutory obligation to tender the resignation. Such an obligation would be contrary to the essence of resignation as a voluntary act, and thus not urged by legal facts specified in statute. If the legislator believes that such circumstances are important enough to cause the loss of the voivodship board membership, a measure based on Article 31 para. 3 VSGA may be applied.

A person entitled to tender a resignation is the voivodship marshal. A question arises, however, whether the respective statement may be made by a proxy authorised by the executive. The Voivodship Self-Government Act does not explicitly provide for such possibility. Article 46 para. 2 of that Act envisages authorizing deputy executives, other voivodship board members, employees of the marshal's office and voivodship heads of self-government units to issue decisions in individual public administration matters on behalf of the marshal. The objective scope of the authorisation referred to in this provision has been clearly limited to individual public administration matters. As noted by the Regional Administrative Court in Gliwice in its judgment of 18 October 2017, IV SA/GI 776/17,¹³ power of attorney is an instrument by which a person participating in legal transactions authorises another person to perform such transactions. A legal transaction performed under the authorisation has direct consequences for the represented person. A legal transaction is a kind of a legal event that mostly applies to civil law relations. As regards public entities, activities undertaken in this branch of law apply most commonly to assets which an entity can dispose of. Public administration bodies acting in the administrative law area may give an employee of an auxiliary institution proxy to exercise executive authority on their behalf. On the other hand, when such bodies act in the civil law area, an administration body may grant an employee power of attorney to perform legal transactions. However, in both areas a legal basis must exist to grant, respectively, proxy or power of attorney. This distinction does not have a nominal nature (the name is not important) but involves identifying the legal basis to grant proxy or power of attorney for the executive or non-executive area of the body's activities, as appropriate. Resignation from a function certainly does not fall within the ambit of Article 46 para. 2, because this provision does not apply to statements of the voivodship marshal that are not classified as 'individual cases in the field of public administration'. On the contrary, it involves a specific matter where a public administration body (in the case under consideration – the voivodship marshal) is competent (and at the same time obliged) to decide, based on the provisions of substantive law, on the rights or obligations of a specific entity. An

¹³ Published in LEX No. 2390363.

administrative matter is the consequence of an administrative law relationship, i.e. a legal situation in which a party is entitled to demand that an administration body define its individual rights resulting from substantive law.¹⁴ A statement of the voivodship marshal on resigning from their function does not meet these criteria, as it does not resolve the matter of the rights and duties of an individual entity based on substantive law and does not have the nature of an administrative decision. Thus, pursuant to Article 46 para. 2 VSGA, the voivodship marshal cannot authorise another person to submit the statement referred to in Article 38 para. 1 VSGA on their behalf. Nor can the marshal grant power of attorney pursuant to Article 98 of the Civil Code of 23 April 1964.¹⁵ Resignation from a function is, after all, not a legal transaction in the meaning of civil law. The provisions concerning power of attorney are found in Title IV of the Civil Code entitled Legal transactions, Section VI Representation. As noted in legal literature, legal transactions form the basic source of a civil law relationship and belong to the very essence of civil law.¹⁶ A legal transaction can only occur with respect to civil law relations entered into by a civil law entity.¹⁷ In the case referred to in Article 38 para. 1 VSGA, the voivodship marshal does not act as a civil law entity, nor does this provision regulate any civil law relationship. This rules out the possibility that resignation from the function may be tendered by a proxy on behalf of the voivodship marshal. To summarise, Article 38 para. 1 VSGA requires a statement of the voivodship marshal, and no provision of that Act allows a possibility to grant power of attorney (proxy) to perform this action. There is also no reference to Article 98 of the Civil Code. The statement of the voivodship marshal to resign from their function is not a legal transaction in the meaning of civil law, and civil law provisions concerning powers of attorney do not apply to it. Nor can the civil law provisions concerning powers of attorney be cited through Article 300 of the Labour Code¹⁸ of 26 June 1974 in connection with Article 43 para. 1 of the Self-Government Employees Act¹⁹ of 21 November 2008. As it follows from Article 4 para. 1(1)(a) SGEA, the voivodship marshal is a self-government employee by election. In such case, in matters not regulated expressly in the SGEA the provisions of the Labour Code apply accordingly (Article 43 para. 1 SGEA), and the employment relationship can be terminated only when the election term expires (Article 73 § 2 LC in connection with Article 43 para. 1 SGEA). Court decisions state that an employment relationship initiated by election is not subject to provisions concerning termination of an employment agreement upon or without notice, including pursuant to Article 52 LC.²⁰ This view is also uncontested in literature. By way of example, one should note the standpoint that the separate nature of an employment relationship initiated by election is,

¹⁴ Cf. the Supreme Administrative Court, Branch in Kraków, judgment of 13 August 2003, II SA/Kr 2361/02, LEX No. 700424.

¹⁵ Consolidated text, Dz.U. of 2019, item 1145, as amended.

¹⁶ M. Safjan, [in:] K. Pietrzykowski (ed.), *Kodeks cywilny*. Vol. I, Warszawa 2005, p. 230.

¹⁷ *Ibid.*, p. 238.

¹⁸ Consolidated text, Dz.U. of 2019, item 1040, as amended; hereinafter LC.

¹⁹ Consolidated text, Dz.U. of 2019, item 1282; hereinafter SGEA.

²⁰ The Supreme Court judgment of 4 December 1979, I PR 93/79, OSNC 1989, No. 6, item 122.

among others, the result of its cessation, because since this relationship is terminated solely when the election term expires (Article 73 § 2 LC), it is not subject to provisions concerning termination of an employment agreement, among others, upon notice, or for reasons which according to the Labour Code may cause termination without notice, also pursuant to Article 52 LC, or expiration of the employment relationship.²¹ Article 73 § 2 LC stresses that an employment relationship initiated by election is of a dependent nature. This is because such a relationship arises in connection with election to a particular position (function), lasts for the term of office of the elected individual, and is terminated when the term ends. The act of election itself is called an administrative act, and the relationship that arises from it is usually referred to by the general name of 'organizational relationship'.²² In contrast, Jakub Stelina stresses that such relationships are primarily of an administrative law nature.²³ Therefore, since provisions concerning termination of an employment relationship upon or without notice do not apply here, one cannot also assume that the resignation may be tendered by proxy. The Supreme Court, in its judgment of 16 January 2009, I PK 127/08,²⁴ explicitly allowed that a statement of will terminating an employment relationship without notice may be made by proxy. This view needs to be endorsed, because no labour law provision requires an employee to make such a statement in person. This also applies to termination of an employment relationship upon notice, as in that case no corresponding provision exists, either. This method is, however, not possible in the case referred to in Article 38 para. 1 VSGA. As already noted, the employment relationship of the voivodship marshal is a relationship initiated by election, and its initiation and termination are regulated by the Voivodship Self-Government Act, therefore it is of an administrative law nature. Its beginning and end are not regulated by the provisions of labour law, but by the aforesaid Act on the system of the state. The Act explicitly stipulates that the resignation is 'tendered by the voivodship marshal' (Article 38 para. 1 VSGA) and 'by them', i.e. the marshal (Article 37 para. 4 VSGA). The provisions do not merely define the subject entitled to tender the resignation, but also objectively determine the manner how it may be tendered. The wording used, in connection with the nature of an employment relationship initiated by election, makes it certain that the voivodship marshal tenders the resignation in person. The cited provisions do not only define who can make the respective statement, but also how it is made, i.e. by whom, which is the result of the legislator's use of the word 'by'. The above conclusion is additionally supported by the fact that ending a term of an individual employed on the basis of election occurs in situations provided for in by-laws regulating election to positions in particular institutions.²⁵ The Voivodship Self-

²¹ B. Ćwiertniak, [in:] K.W. Baran (ed.), *Kodeks pracy. Komentarz*, Warszawa 2018, thesis 5.1 to Article 73.

²² *Ibid.*, thesis 2.1 to Article 73.

²³ J. Stelina, *Wybór*, [in:] R. Hauser, Z. Niewiadomski, A. Wróbel (eds), *System Prawa Administracyjnego*, Vol. 11: *Stosunek służbowy*, Warszawa 2011, p. 210.

²⁴ Published in ONSP 2010, No. 15–16, item 183.

²⁵ T. Zieliński, Ł. Pisarczyk, [in:] L. Florek (ed.), *Kodeks pracy. Komentarz*, Warszawa 2009, p. 437.

Government Act does not offer a possibility of tendering a resignation statement by proxy – which means this situation was not provided for – explicitly stipulating instead that the statement is to be tendered by the voivodship marshal. Resignation from the voivodship marshal position can, therefore, come only from the person who holds it, to the exclusion of any other subject.

Article 57 para. 1 VSGA, stipulating that statements of will on behalf of the voivodship are made by the voivodship marshal together with a member of the voivodship board, unless otherwise provided for in the voivodship statutes, is also not applicable to resignation of the voivodship marshal from their position. The statement referred to in Article 38 para. 1 VSGA is not a one made by the voivodship marshal on behalf of the voivodship, but in their own name, hence the course of action referred to in Article 57 para. 1 VSGA does not apply to it.

As noted in literature, a resignation statement of the voivodship marshal must be tendered unequivocally, leaving no doubt as to the executive's intentions,²⁶ which view I also share. The essence of resignation of the voivodship's marshal is renouncing the function they hold. This cannot be doubted, as otherwise it would be difficult to recognize that the resignation has been tendered effectively. The Voivodship Self-Government Act does not define the form in which the marshal's statement must be made. It can accurately be said that the statement may be made in writing, as well as verbally (for example, being delivered during a voivodship assembly session). It is also permitted to use an electronic form; as noted, the possibility of tendering a resignation in the form of an electronic document in the meaning of provisions of the Act on computerization of operations of entities carrying out public tasks, delivered by means of electronic communication, cannot be ruled out.²⁷ A written form has been reserved by the legislator for the motion to dismiss the voivodship marshal (Article 37 para. 2 VSGA), and therefore since Article 38 para. 1 VSGA does not contain such a requirement, it should be concluded that both written and verbal as well as electronic forms are permitted. The Act does not exclude any of these forms. Thus, since there are no limitations in this respect, not only is an electronic document in the meaning of provisions of the Act on computerization of entities carrying out public tasks permitted, but so is any other electronic form. This interpretation is not challenged by the legislator's use of the word 'tender' with respect to resignation. From a linguistic point of view, to 'tender' means to 'communicate something in writing or verbally',²⁸ to 'announce something officially, advise about something'.²⁹ This word does not, therefore, refer solely to communication in writing.

A question arises whether the voivodship marshal can tender a resignation in the form of a press release, by a statement announced at a special press conference, or through social media. However, this question is not about the form of the voivodship marshal's statement, but about the manner of tendering their resignation. A prerequisite for the expiration of the voivodship marshal's term is acceptance

²⁶ Cz. Martysz, *supra* n. 10, thesis 1 to Article 38.

²⁷ *Ibid.*

²⁸ <https://sjp.pwn.pl/slowniki/zlozenie.html> (accessed 13.01.2020).

²⁹ *Słownik Języka Polskiego*, *supra* n. 4, p. 1034.

of their resignation by means of a resolution of the voivodship assembly (Article 38 para. 2 VSGA). Therefore, it should be concluded that the resignation must be tendered at the competent body, i.e. the voivodship assembly, by being addressed to it. Even public statements about resigning from a function do not meet the condition of effective tendering of resignation, since they are made to the public at large, not to the voivodship assembly as the body entitled to accept it. What matters is not only the ability of the assembly members to examine the marshal's statement (because they can certainly do so via social media, for example), but also to launch a procedure that leads to resignation acceptance (Article 38 para. 2 VSGA). In consequence, the statement must formally reach the body competent to make a decision in this respect. Accordingly, statements made in the public sphere, including in the media, but not tendered at the body competent to accept the resignation cannot be considered an effective tendering of resignation. This position is supported by the necessity to guarantee the certainty of legal transactions.

Article 38 paras 1 and 2 VSGA does not explicitly provide for a possibility of withdrawing the resignation. As noted in literature, it must be remembered that the content of Article 38 para. 1 VSGA obliges the voivodship assembly to accept the resignation, and hence any potential attempts of the marshal to withdraw their statement of will may not be effective. However, a position can also be taken that the marshal may withdraw their statement, regardless of when it has been tendered, not later than before the respective vote takes place.³⁰ In my opinion, while the Voivodship Self-Government Act does not contain a clear regulation allowing a resignation to be withdrawn, such a possibility cannot be ruled out. The mere renouncement of a function does not, in and of itself, lead in this case to ending the executive's term and termination of employment relationship, as clearly follows from Article 38 paras 2 and 3 VSGA. In that case, the term expires only when the competent body accepts the resignation.³¹ Until such time as the vote on resolution to accept the resignation starts, the voivodship marshal can administer their statement of resignation as they see fit, since it has not yet produced a consequence of bringing their term to an end. The voivodship marshal is entitled to tender a resignation, but it is only when accepting this resignation is put to the vote that the stage in which a body competent in this matter is taking its position commences. Since tendering a resignation does not automatically end the term, this means that the voivodship marshal can still exercise their right to resign as they see fit, because it has not produced any results yet (the term continues). While the executive can resign, the Act does not explicitly say that a statement in this respect is final. The right to resign from a function is not exercised by the mere statement of resignation. By resigning, the entitled individual exercises the right vested in them, but they do likewise when they withdraw their original statement. Although resigning from a function is a public law institution, this does not mean that the entitled individual cannot alter a decision once it is made. If the legislator intended to rule out such possibility, the Act would link the end of the term to the mere fact of resigning from a function, or explicitly

³⁰ Cz. Martysz, *supra* n. 10, thesis 1 to Article 38.

³¹ T. Zieliński, Ł. Pisarczyk, *supra* n. 25, p. 437.

prevent withdrawing a statement in this respect. None of these measures has been introduced in the Voivodship Self-Government Act. In the case under consideration, no effects related to the status of the voivodship marshal have been triggered, with the exception of the statutory obligation to hold a vote on accepting the resignation at the forthcoming voivodship assembly session (Article 38 para. 2 VSGA). Denying the voivodship marshal the possibility to alter their decision would also run counter to the voluntary nature thereof, as discussed above. The result of that nature is the right to change one's original expression of will until the effect resulting from the original statement is triggered, i.e. until a vote on accepting the resignation is held.

If the resignation is tendered by the voivodship marshal, it is accepted by a simple majority of votes (Article 38 para. 1 VSGA). In such case, the voivodship assembly should at its next session adopt a resolution on accepting the resignation of the entire voivodship board. The 'next session' of the voivodship assembly should be understood both as a session planned according to the adopted assembly working schedule, and the session on which the executive tendered the resignation. This session does, after all, come next in relation to the date on which the statement on resignation has been tendered. What matters, therefore, is the date on which the executive has tendered the resignation: from this viewpoint, the next session is the one following the statement in this matter. An unfinished assembly session is a session that takes place after the voivodship marshal has tendered the resignation. Hence, adopting the resolution referred to in Article 38 para. 2 VSGA can also occur during the current (pending) voivodship assembly session.

Pursuant to Article 38 para. 3 VSGA, failure to adopt the resolution referred to in Article 38 para. 2 is tantamount to accepting the resignation on the last day of the month in which the assembly session referred to in that provision has taken place. As noted in literature, Article 38 para. 3 introduced a guarantee that a voivodship marshal who has made a statement of will to resign from their function will serve as the executive no later than the last day of the month in which the voivodship assembly session devoted to accepting the resignation has taken place. In addition, the provision stipulates that the assembly is not entitled to adopt a resolution refusing to accept a resignation, however the legislator, foreseeing that such a resolution may be adopted, granted effective protection to the marshal by setting a statutory date on which their duties cease.³² This provision is important from the point of view of certainty of legal transactions. It can be also concluded that when the voivodship assembly refuses to accept the voivodship marshal's resignation (which it cannot formally do), the resignation has the legal consequence of ending the executive's term, and Article 38 para. 3 stipulates exactly when (at what date) this happens. One has to share the view that on this date the employment relationship with the marshal is terminated and the executive ceases to be a public administration body, loses the right to issue administrative decisions, and no longer heads the marshal's office.³³ This view is firmly grounded in Article 73 para. 2 LC in conjunction with Article 43 para. 1 VSGA.

³² Cz. Martysz, *supra* n. 10, thesis 2 to Article 38.

³³ *Ibid.*

Concluding, a voivodship marshal is free to tender a resignation from their function at any time and without giving any reasons, because the Act does not require to reveal them. Resignation is the executive's personal prerogative and the possibility of making a statement by proxy is ruled out. The resignation can be made in writing, verbally as well as in the electronic form, however, in order to be effective, it needs to be addressed to the body competent to accept the resignation, i.e. the voivodship assembly. A statement about resigning from the marshal's function must be explicit. Tendering the resignation in itself does not have the consequence of bringing the voivodship marshal's term to an end; this occurs only when the resignation is accepted by the voivodship assembly. The Act defines the procedure to accept the resignation of the voivodship marshal, and failure to adopt a resolution, referred to in Article 38 para. 2 VSGA, to accept the resignation of the entire board as a result of the voivodship marshal's resignation does not prevent the executive's term from ending, as clearly follows from Article 38 para. 3 VSGA. The Act does not exclude the possibility of the voivodship marshal's withdrawing their resignation due to both the nature of this statement and the reservation that its legal effects occur only following its acceptance by the voivodship assembly. Until that time, the voivodship marshal can administer the statement they have made as they see fit, and guaranteeing them the right to tender a resignation means that their will in this scope needs to be respected and that the statement can be withdrawn until the vote referred to in Article 38 para. 2 VSGA is held. Otherwise, the inherent voluntary nature of the statement to resign from the function is not recognised.

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RESIGNATION OF VOIVODSHIP MARSHAL FROM THEIR FUNCTION IN THE LIGHT OF VOIVODSHIP SELF-GOVERNMENT ACT

Summary

The paper analyses the concept of 'tendering resignation' by a voivodship marshal, referred to in Article 38 para. 1 and Article 37 para. 4 of the Voivodship Self-Government Act. The author interpretes the term 'resignation', explaining its essence and nature. In the author's opinion, only the authorised person, i.e. the voivodship marshal, may submit a statement of resignation, which excludes the possibility of doing this by proxy. The Act does not specify the form in which the statement of resignation is made, which means that it can be submitted both in writing and verbally, as well as in the electronic form. Withdrawal of the tendered resignation is allowed, provided that the voting procedure stipulated in Article 38 para. 2 of the Voivodship Self-Government Act has not been commenced. The paper also analyses the procedure to be followed when accepting the resignation tendered by the voivodship marshal and its effects.

Keywords: voivodship marshal, resignation of voivodship marshal, withdrawal of resignation, acceptance of resignation

REZYGNACJA MARSZAŁKA WOJEWÓDZTWA Z PEŁNIONEJ FUNKCJI W ŚWIETLE USTAWY O SAMORZĄDZIE WOJEWÓDZTWA

Streszczenie

W artykule analizie poddano instytucję „złożenia rezygnacji” przez marszałka województwa, o której mowa w art. 38 ust. 1 i art. 37 ust. 4 ustawy o samorządzie województwa. Autorka dokonała wykładni pojęcia „rezygnacja”, wyjaśniając jej istotę i charakter. Zdaniem autorki oświadczenie o zrzeczeniu się pełnionej funkcji może złożyć wyłącznie osoba uprawniona, a więc marszałek województwa, co wyklucza możliwość dokonania tej czynności przez pełnomocnika. Ustawa nie określa formy oświadczenia o rezygnacji, co oznacza, że może ono być złożone zarówno pisemnie, jak i ustnie, a także w formie elektronicznej. Nie jest wykluczone cofnięcie złożonej rezygnacji, pod warunkiem jednak że nie rozpocznie się procedura głosowania, o której mowa w art. 38 ust. 2 ustawy o samorządzie województwa. Artykuł analizuje także tryb postępowania w przedmiocie przyjęcia rezygnacji złożonej przez marszałka województwa oraz jej skutki.

Słowa kluczowe: marszałek województwa, rezygnacja marszałka województwa z pełnionej funkcji, cofnięcie rezygnacji, przyjęcie rezygnacji

DIMISIÓN DE MARISCAL DE VOIVODÍA DE SU FUNCIÓN DESDE LA PERSPECTIVA DE LA LEY DE AUTOGOBIERNO DE VOIVODÍAS

Resumen

En el artículo se analiza la institución de “presentar la dimisión” por el mariscal de voivodía, a la cual se refiere el art. 38 ap. 1 y 37 ap. 4 de la ley de autogobierno de voivodías. La Autora interpreta la noción “dimisión”, explicando su naturaleza y caracter. Según la Autora,

la declaración de dimisión de función puede ser prestada sólo por la persona autorizada, o sea, el mariscal de voivodía; queda excluida la ejecución de tal acto por el apoderado. La ley no determina la forma de declaración de dimisión, lo que significa que puede ser presentada tanto por escrito como oralmente, y también en forma electrónica. No queda excluida la posibilidad de retirar la dimisión, siempre que no haya empezado el proceso de votación al que se refiere el art. 38 ap. 2 de la ley de autogobierno de voivodías. El artículo analiza también el proceso de aceptación de la dimisión presentada por el mariscal de voivodía y sus efectos.

Palabras claves: mariscal de voivodía, dimisión de mariscal de voivodía de su función, retirar la dimisión, aceptar la dimisión

УХОД В ОТСТАВКУ МАРШАЛА ВОЕВОДСТВА В СВЕТЕ ЗАКОНА «О ВОЕВОДСКОМ САМОУПРАВЛЕНИИ»

АННОТАЦИЯ

В статье анализируется институт «ухода в отставку» маршала воеводства, о котором говорится в ст. 38 пар. 1 и ст. 37 пар. 4 Закона «О воеводском самоуправлении». Автор приводит истолкование термина «уход в отставку», объясняя его суть и характер. По мнению автора, заявление об отказе от занимаемой должности может сделать только само управомоченное лицо, т.е. маршал воеводства, что исключает возможность совершения данного действия доверенным лицом. В законе не уточняется форма заявления об отставке, что означает, что такое заявление может быть сделано как в письменной, так и в устной форме, а также посредством электронной коммуникации. Отзыв заявления об отставке не исключается при условии, однако, что не началась процедура голосования, предусмотренная ст. 38 пар. 2 Закона «О воеводском самоуправлении». В статье также анализируется процедура принятия отставки маршала воеводства и последствия его отставки.

Ключевые слова: маршал воеводства, заявление маршала воеводства об отставке, отзыв заявления об отставке, принятие отставки

DER RÜCKTRITT EINES WOIWODSCHAFTSMARSCHALLS VON SEINER FUNKTION NACH DEM POLNISCHEN GESETZ ÜBER DIE SELBSTVERWALTUNG DER WOIWODSCHAFTEN

Zusammenfassung

In dem Artikel wird das Rechtsinstitut des „Rücktritts“ eines Woiwodschaftsmarschalls nach Artikel 38 Absatz 1 und Artikel 37 Absatz 4 des polnischen Gesetzes über die Selbstverwaltung der Woiwodschaften untersucht. Die Autorin nimmt eine Auslegung des Begriffes „Rücktritt“ vor und erläutert Wesen und Charakter des Rechtsbegriffes. Der Verfasserin zufolge kann die Rücktrittserklärung, d.h. die Erklärung über den Verzicht auf die ausgeübte Funktion nur von der dazu befugten Person d.h. dem Marschall der Woiwodschaft, abgegeben werden, wodurch die Möglichkeit ausgeschlossen ist, dass die durch einen Bevollmächtigten erfolgt. Die Form der Rücktrittserklärung ist in dem Gesetz nicht festgeschrieben, was bedeutet, dass diese schriftlich und mündlich oder auch in elektronischer Form abgegeben werden kann. Rückgenommen werden kann ein erklärter Rücktritt, solange, wie das Abstimmungsverfahren nach Artikel 38 Abschnitt 2 des polnischen Gesetzes über die Selbstverwaltung der Woiwodschaften noch nicht

läuft. Eingehend untersucht werden in dem Artikel auch die Verfahrensweise zur Annahme des von einem Woiwodschafsmarschall eingereichten Rücktritts und dessen Auswirkungen.

Schlüsselwörter: Woiwodschafsmarschall, Rücktritt eines Woiwodschafsmarschalls seinem Amt, Rücknahme des Rücktritts, Annahme des Rücktritts

DÉMISSION DU MARÉCHAL DE VOÏVODIE DE SES FONCTIONS À LA LUMIÈRE DE LA LOI SUR L'AUTONOMIE GOUVERNEMENTALE DES VOÏVODIES

Résumé

L'article analyse l'institution de la «démission» par le maréchal de voïvodie, visée à l'art. 38 al. 1 et l'art. 37 al. 4 de la Loi sur l'autonomie gouvernementale des voïvodies. L'auteur a interprété le terme «démission», expliquant son essence et son caractère. Selon l'auteur, une déclaration de renonciation à la fonction ne peut être faite que par une personne autorisée, c'est-à-dire le maréchal de voïvodie, ce qui exclut la possibilité de le faire par procuration. La loi ne précise pas la forme de la déclaration de démission, ce qui signifie qu'elle peut être présentée à la fois par écrit et oralement, ainsi que sous forme électronique. Le retrait de la démission soumise n'est pas exclu, à condition toutefois que la procédure de vote visée à l'art. 38 al. 2 de la Loi sur l'autonomie gouvernementale des voïvodies ne commence pas. L'article analyse également la procédure à suivre pour accepter une démission déposée par un maréchal de voïvodie et ses effets.

Mots-clés: maréchal de voïvodie, démission du maréchal de voïvodie, retrait de la démission, acceptation de la démission

RINUNCIA ALLE SUE FUNZIONI DA PARTE DEL PRESIDENTE DEL VOIVODATO ALLA LUCE DELLA LEGGE SUI VOIVODATI

Sintesi

Nell'articolo si è analizzata l'istituzione della "presentazione di rinuncia", da parte del presidente del voivodato, di cui all'art. 38 comma 1 e all'art. 37 comma 4 della legge sui voivodati. L'autrice ha compiuto un'interpretazione del concetto di "rinuncia", chiarendo la sua essenza e il suo carattere. Secondo l'autrice la dichiarazione di rinuncia alle sue funzioni può essere presentata esclusivamente dalla persona autorizzata, e quindi dal presidente del voivodato, e ciò esclude la possibilità di eseguire tale atto attraverso un rappresentante. La legge non determina la forma della dichiarazione di rinuncia, il che significa che può essere presentata sia per iscritto che verbalmente, e anche in formato elettronico. Non è esclusa la ritrattazione della rinuncia presentata, a condizione tuttavia che non sia iniziata la procedura di votazione di cui all'art. 38 comma 2 della legge sui voivodati. L'articolo analizza anche la procedura di accettazione della rinuncia presentata dal presidente del voivodato e le sue conseguenze.

Parole chiave: presidente del voivodato, rinuncia alla sua funzione da parte del presidente del voivodato, ritrattazione della rinuncia, accettazione della rinuncia

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