

## APPOINTING AND DISMISSING A DISTRICT COMMANDANT OF THE STATE FIRE SERVICE IN POLAND

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**Abstract.** The article is the first, original and only scientific study of the issue of appointing and dismissing district commandants of the State Fire Service in Poland. Thus it fills a gap in the science of law, which can be a reference point for judicial decisions. The article deals with such issues as the administrative nature of the appointment and dismissal, the prerequisites for the appointment and dismissal of the commandant and their proof, the procedure for the appointment and dismissal and the participation in them of the organs of the State Fire Service and the organs of public administration, the importance of the *starost's* opinion in these procedures, the importance of the loss of confidence in the appointment and dismissal of the commandant. The issue of the application of the Code of Administrative Procedure raised in the article plays an important role in these procedures. The article is based on the current legal status, exhaustively analyzed and applied judicial decisions and views of the science of law. The paper also refers to the views occurring in the procedures for appointing and dismissing commandants in other uniformed services.

**Keywords:** State Fire Service, district commandant, public administration, fire protection, state security

### INTRODUCTION

The subject of the article is the appointment and dismissal of a district commandant of the State Fire Service.<sup>1</sup> The rationale behind this choice of topic is the lack of scientific studies on the subject. Therefore, the article fills a gap in the science of law. The study is also of great practical importance, because in Poland there are 314 *powiats* (counties) and 66 cities with *powiat* rights,<sup>2</sup> as well as 335 district commandants of the SFS.<sup>3</sup> The rotation in

<sup>1</sup> Hereinafter: SFS.

<sup>2</sup> Administrative division of Poland according to the Central Statistical Office, see <https://stat.gov.pl/statystyka-regionalna/jednostki-terytorialne/podzial-administracyjny-polski/> [accessed: 08.01.2022].

<sup>3</sup> See <https://strazacki.pl/artyku%C5%82y/pa%C5%84stwowa-stra%C5%BC-po%C5%BCarna->

the position of district commandant is usually greatest in the period of post-election changes. The management of the state, of the Ministry of Internal Affairs and Administration, and of the SFS decide to change the vast majority of county commandants after an election.

The aim of the study is to describe the prerequisites and principles of appointing and dismissing a district commandant of the SFS. The main problem of the study can be laid out in specific questions: What is the legal nature of the decision to appoint and dismiss a district commandant? How do public administration officials participate in the procedure of appointment and dismissal? Are the opinions of public administration officials in these procedures binding? What are the main reasons for dismissing someone from the post of district commandant and must they be proved? Does the Code of Administrative Procedure<sup>4</sup> apply in the procedure of appointing and dismissing a district commandant?

The article uses traditional scientific methods from the science of law, such as the historical method, the hermeneutic method, and the argumentative method.

## 1. HISTORICAL AND LEGAL BACKGROUND

According to the Act of 4 February 1950 on fire protection and its organisation,<sup>5</sup> which entered into force on 28 February 1950, district and local commandant fire officers were appointed and dismissed by the commandant fire officer after consultation with the praesidium of the relevant national council. This regulation was in force and unchanged until 24 April 1960, when it was repealed by the Fire Protection Act of 1960.

From 25 April 1960 to 17 June 1975 there were district fire brigades within the structures of the professional fire brigades. They functioned as fire protection authorities of the praesidia of national councils, subject to the supervision of the Minister of Internal Affairs. The fire protection authorities operated in accordance with the orders and guidelines issued by the Minister of Internal Affairs and the relevant higher authorities and praesidia of national councils.

The Decree of 27 December 1974 on the Fire Service<sup>6</sup> stipulated that commandants of district fire brigades (city or district) were appointed by the head of the district (city or district) from among the candidates presented by the commandant of the voivodeship fire brigade (the commandant of fire brigades

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w-%E2%80%9Epigu%C5%82ce%E2%80%9D [accessed: 25.04.2022].

<sup>4</sup> Journal of Laws of 2021, item 735 as amended [hereinafter: CAP].

<sup>5</sup> Journal of Laws No. 6, item 51.

<sup>6</sup> Journal of Laws No. 50, item 321 – the decree entered into force on 1 January 1975.

from that city was excluded from the voivodeship). This regulation was repealed by the enactment of the Law on Fire Protection of 12 June 1975,<sup>7</sup> which came into force on 18 June 1975. This regulation remained unchanged until 31 December 1988, when it was made more precise by another amendment.<sup>8</sup> Starting 1 January 1989 a provision came into force, according to which a regional commandant of fire brigades was appointed by a local state administrative body of general competence of a provincial level from among the candidates presented by the commandant of the provincial fire brigades.

On 1 January 1992, when a new Act on the SFS of 24 August 1991 came into force,<sup>9</sup> there were no district (city) fire brigades, but rather regional fire brigades within the structure of the SFS. A district commandant was appointed and dismissed from among the fire service officers by the commandant of the SFS, on the request of the competent regional commandant. At that time there was no legal regulation allowing a *starosta* (head of the county district) to participate in the appointment of a district commandant of the SFS.

The institution of district commandant appeared on 1 January 1999 when the Act of 24 July 1998 on the change of certain Acts defining the powers of public administration bodies – in connection with the reform of the state system<sup>10</sup> came into force. The reform of the state system was introduced by the Act of 24 July 1998 by instituting a basic three-tier territorial division of the country.<sup>11</sup> The units of the three-level division of the country's territory were then established as communes, counties, and voivodships.

At that time a legal regulation appeared in the Act on the SFS, according to which a district commandant officer was appointed from among the officers of the SFS by the provincial commandant of the SFS in agreement with the *starosta*. The provision of Article 35(3)(1) of the Act on County Government did not apply. A district (municipal) commandant of the SFS could be dismissed by a regional commandant after consultation with the *starosta*. The provision of Article 12(3) applied accordingly. This regulation survived practically unchanged until 30 June 2005.

On 1 July 2005 a regulation was added to the existing law, which has remained unchanged, according to which in cases where the candidate for the position of district (city) commandant of the SFS is not approved or does not accept the position, another candidate shall be presented to the *starosta* within 30 days of the day the candidate was presented. In case of a disagreement with

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<sup>7</sup> Journal of Laws No. 20, item 106 as amended.

<sup>8</sup> Act of 16 June 1988 on amending certain acts regulating the principles of functioning of territorial bodies of state authority and administration, Journal of Laws No. 19, item 132.

<sup>9</sup> Journal of Laws No. 88, item 400.

<sup>10</sup> Journal of Laws No. 106, item 668.

<sup>11</sup> Journal of Laws No. 96, item 603.

this candidacy, within 14 days of its presentation to the *starosta* the voivodship commandant of the SFS appoints the officer selected by the voivode.

The function of district commandant of the fire service has existed in the structures of the state (formerly professional) fire service since at least World War II. At some point, the name was changed to district commandant in connection with the changing territorial and institutional structure of the state. Since 1 January 1999, when the reform of the three-tier territorial division of the country was introduced and *powiats* were created, there has been the function of *powiat* commandant in the structure of the SFS.

From post-war times until today the legal model of appointing the district (regional) fire commandant, in which officials of state (professional) fire brigades and local officials of public administration participate, has been preserved. The only changes in this matter concerned the level of the officials of fire brigades and public administration which participated in the appointment of the district (regional) commandant and the nature of their participation, either in the form of an opinion or a directive to appoint a candidate.

## 2. APPOINTMENT AND DISMISSAL OF COMMANDANTS IN OTHER UNIFORMED SERVICES

District (city) police commandants are appointed and dismissed by the regional police commandant, after consultation with the *starosta*. The provision of Article 35(3)(1) of the Act of 5 June 1998 on county government does not apply (Article 6c (1) of the Police Act of 6 April 1990<sup>12</sup>). In the case of failure to receive an opinion from a *starosta*, the regional police commandant may appoint a respective district (city) police commandant after 14 days have lapsed from the date the request for an opinion was presented.

In the prison service, there is no post of district commandant and the district governor is not involved in the procedure for appointing district directors. In the border guard service, there is no post of county commandant and the procedure for appointing a branch commandant does not involve the district governor. In the Internal Security Agency, the Intelligence Agency, and the Central Anti-Corruption Bureau there are no positions of county commandants and the *starosta* does not play a role in appointment in these agencies.

It is justified to analyse the regulations of uniformed services other than those of the SFS, as it is rightly and uniformly indicated in judicial decisions that due to the similarity of regulations in the acts of uniformed services, judicial decisions issued, for example, in relation to the rights of police officers can be used to solve problems occurring in the SFS, for instance.<sup>13</sup>

<sup>12</sup> Journal of Laws of 2021, item 1882 as amended.

<sup>13</sup> Judgment of the Supreme Administrative Court of 13 February 2019, ref. no. I OSK 864/17,

### 3. APPOINTMENT OF THE DISTRICT COMMANDANT OF THE STATE FIRE BRIGADE

#### 3.1. General principles

Under the current legal status a district (city) commandant<sup>14</sup> of the SFS is appointed from officers of the SFS by the voivodeship commandant of the SFS in agreement with the *starosta*. The provision of Article 35(3)(1)<sup>15</sup> of the Act of 5 June 1998 on county government<sup>16</sup> does not apply. In the event of a failure to take up a position or a failure to accept the submitted candidacy for the position of the district (municipal) commandant of the SFS, another candidate shall be presented within 30 days of the initial presentation to the *starosta*. If no agreement is reached with regard to this candidacy within 14 days of its presentation to the *starosta*, the voivodeship commandant shall appoint the officer indicated by the voivode for the position of the *powiat* (municipal) commandant (Article 13(1–2) of the SFS Act). A firefighter's service relationship arises – in the case of positions which the SFS Act provides for the appointment of – on the day of his/her appointment to the position (Article 31 of the SFS Act). The appointment of a firefighter to a particular official position in the SFS depends on his/her education, qualifications, and length of service or work (Article 36(1) of the SFS Act).<sup>17</sup> As far as the appointment of district commandants is concerned, there are generally no statements of law or court judgements.

The appointment of a district commandant of the SFS is a three-stage process. The successive stages depend on the consensus of the bodies appointing the district commandant. If a consensus is reached in any stage, there is no need to proceed to a further stage. A lack of consensus in any stage of the procedure results in moving to the next stage. The third and final stage must lead to the appointment of a candidate to the position of district commandant. Officials of both the SFS (the regional commandant of the SFS) and of

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Legalis no. 1889822; judgment of the Provincial Administrative Court in Warsaw of 15 February 2019, ref. no. II SA/Wa 784/18, Legalis no. 2237363; judgment of the Supreme Administrative Court of 26 January 2012, ref. no. I OSK 921/11, Legalis no. 117452.

<sup>14</sup> In cities with county rights, a municipal commandant is appointed. In the remainder of this article the phrase 'district commandant' will be used. Any conclusions and comments in relation to a district commandant will apply equally to municipal commandant of the SFS.

<sup>15</sup> The wording of Article 35(3)(1) of the Coll: (3) The *starosta*, exercising authority over county services, inspections, and guards, appoints and dismisses managers of these units, in agreement with the voivode, and also performs activities with respect to them in matters of labour law, unless specific provisions provide otherwise.

<sup>16</sup> Journal of Laws of 2020, item 920 as amended.

<sup>17</sup> This provision also applies to appointments to the position of district commandant of the SFS.

public administration (the *starosta* and/or voivode) take part in the appointment procedure.

A requirement for appointment to the position of district commandant of the SFS is that the appointed firefighter must be an SFS officer. The officer corps of the SFS comprises the ranks of junior captain, captain, senior captain, junior brigadier, brigadier, senior brigadier, super brigadier, and brigadier general. Firemen from the ranks of privates, aspirants, or non-commissioned officers cannot be appointed to the position of district commandant.

In each of the stages of appointing a district commandant there is cooperation between the SFS authority and the public administration authority. In the first two stages there is interaction between the regional commandant of the SFS and the *starosta*, whilst in the third stage the regional commandant and the voivode cooperate.

In the first two stages, the regional commandant of the SFS is the official who initiates the appointment procedure, selecting candidates among SFS officers. This selection is somewhat discretionary or arbitrary in nature. The regional commandant need not consult with anyone about the selection of a candidate, and there are no statutory requirements that a candidate for the position of district commandant must meet. Such a person must be able to perform the statutory tasks assigned to the position of a district commandant of the SFS, so the choice cannot be completely detached from matters of the education, knowledge, and experience of the potential candidates.<sup>18</sup>

It is necessary to agree with the uniform line of rulings of administrative courts, expressing the view that appointment to the position of district commandant of the SFS is done in order to perform specific tasks and usually in connection with carrying out the relevant managerial functions; the guarantee of the performance of these functions is the full suitability of a given person for a specific official position. This relationship is based on trust. Another condition for appointment, in addition to expertise and experience, is that the appointing authority has trust in the appointee for a given position.<sup>19</sup> The appointment has the nature of administrative discretion.<sup>20</sup> So far, the science of law has not expressed a position in this respect.

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<sup>18</sup> Pursuant to Article 36(1) of the SFS Act, the appointment of a firefighter to a particular official position in the SFS depends on his/her education, qualifications, and length of service or work.

<sup>19</sup> Ref. no. I OSK 921/11; judgment of the Provincial Administrative Court in Warsaw of 16 April 2009, ref. no. II SA/Wa 87/09, Legalis no. 213426; judgment of the Provincial Administrative Court in Warsaw of 8 March 2011, ref. no. II SA/Wa 1808/10, Legalis no. 355216; judgment of the Supreme Administrative Court of 28 February 2007, ref. no. I OSK 324/06, Legalis no. 236699.

<sup>20</sup> Judgment of the Provincial Administrative Court in Warsaw of 5 October 2006, ref. no. II SA/Wa 1146/06, Legalis no. 292865.

Pursuant to Article 58(2) of the SFS Act, a firefighter performing his/her duties in a position for which the provisions of this Act provide for appointment cannot perform the function in a trade union and is not subject to the protection referred to in Article 32 of the Law on Trade Unions of 23 May 1991.<sup>21</sup> In view of this regulation, it should be concluded that a firefighter performing the function of a district commandant officer cannot perform the function in a trade union and is not subject to the protection referred to in Article 32 of the Act on Trade Unions of 23 May 1991.

### 3.2. First stage of appointment

After an internal selection within the ranks of the SFS, the regional commandant is obliged to submit a candidate to the *starosta* for approval. The law expressly mentions the appointment of a district commandant on the basis of an agreement between the regional commandant and the *starosta*. The provision does not describe the intended agreement. It should be regarded as an ‘informal’ agreement, one that does not require prior written agreement concerning the opinion on the candidate. The requirement of agreement is met if the regional commandant of the SFS indicates the candidate of his/her choice in writing to the *starosta* and the *starosta* issues his/her opinion. It is permissible for the regional commandant to justify the choice, which probably yields a better chance that the *starosta* will approve the selected candidate. It is unacceptable for the regional commandant to present several candidates at the same time and for the *starosta* to select a candidate for approval. This is indicated in the regulation, which speaks explicitly about presenting a candidacy, not candidates.

After the *starosta* is presented with a candidate, he/she is obliged to issue an opinion on the presented candidate. Although Article 13(1–2) of the SFS Act do not literally state that a *starosta* expresses his/her opinion, Article 13(3) does expressly indicate the necessity of expressing an opinion. Therefore, it should be understood that the *starosta* should express an opinion in the procedure for appointing a district commandant of the SFS, as in the procedure for the dismissal of a district commandant. The opinion should be in writing and it should be returned to the regional commandant if the *starosta* expresses and prepares such an opinion.

In the first stage of appointment, the *starosta* has 30 days to react to a nomination. The *starosta* may react in one of three ways. Firstly, he/she may express approval of the selected candidate. Secondly, he/she may express outright disapproval of the candidate. Thirdly, he/she may not take any position.

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<sup>21</sup> This provision makes the termination and dissolution of legal relations of trade union members subject to the approval of the company trade union organisation.

The *starosta's* acceptance of a presented candidate results in the need for the regional commandant to appoint the approved candidate to the position of district commandant of the SFS. The *starosta's* approval of the candidate precludes the regional commandant dismissing a previously selected candidate. In this respect, the opinion of the *starosta* is binding for the voivodship commandant. After the *starosta* issues an opinion approving the candidate, the last formal element of this stage takes place: the formal appointment of the candidate for the position of district commandant by the voivodeship commandant fire officer.

If there is a clear lack of acceptance of the presented candidate from the *starosta* or a failure to take a position on the presented candidate, the first candidacy is rejected and the second stage of the appointment procedure is triggered.

### **3.3. Second stage of appointment**

The second stage of the procedure is a repetition of the steps taken in the first stage. It is necessary for the voivodship commandant to present a single candidate and for the *starosta* to take a stance. The only thing that changes is that the time in which the *starosta* should react to the presented candidate is reduced from 30 days to 14 days. Written approval of a candidate ultimately results in his/her appointment by the regional commandant to the position of district commandant.

If there is a clear lack of acceptance of the presented candidate from the *starosta* or a failure to take a stance on the presented candidate, the second candidacy is rejected and the third stage of the appointment procedure is triggered. If the *starosta* fails twice to approve a candidate, not only will the third stage of appointing a district commandant begin, but the *starosta* will also lose the right to issue opinions on subsequent candidates.

### **3.4. Third stage of appointment**

The third stage of appointment is fundamentally different from the previous two stages. First of all, the role of *starosta* in the appointment of a district commandant of the SFS is taken over by the voivode. Secondly, the actions of the voivode do not take the form of an opinion, but rather of a directive; they indicate the SFS officer who should be appointed to the position of a district commandant by the voivodship commandant. Thirdly, the legislature did not specify a time limit within which an SFS officer should be appointed to the position of district commandant in the third stage. Fourthly, it has to be acknowledged that a voivode does not have sufficient knowledge of the ranks of the several hundred SFS officers in his/her province. The voivode can only be assisted in the proper selection of candidates by the appropriate local regional commandant of the SFS, who does have such an overview.



The role of the regional commandant of the SFS in the third stage of the appointment procedure is also limited. Article 13 does not give the regional commandant the right to choose a single candidate presented to the voivode for acceptance. In order for a voivode to direct the provincial commandant of the SFS to select an officer for the position of district commandant without possessing adequate knowledge of the SFS, he/she must receive from the provincial commandant of the SFS several relatively equivalent candidates with their competences indicated to justify their selection. A voivode then, being aware that each of the presented candidates is suitable for the position of the district commandant, can arbitrarily and bindingly select a candidate to be chosen for the position of district commandant. A voivode is not in a position, unlike a *starosta*, to take no position or to reject all candidates. A voivode has only one way to react to the candidates presented, which is to select a suitable person in his/her opinion. Therefore, the provincial commandant of the SFS should present a sufficient number of candidates to enable the voivode to choose a suitable one. The candidates should be presented by the regional commandant in writing, just like the selection made by the voivode. If a voivode receives an inadequate selection of candidates, he/she can ask the regional commandant to extend the list of candidates before the formal decision is made. The provincial commandant is bound by the provincial decision. The final element of this stage is the formal appointment of the selected candidate to the position of district commandant of the SFS by the provincial commandant of the SFS.

This model for the third stage, giving the dominant role to the voivode, prevents the procedure for appointing a district commandant from being drawn out as a result of discrepancies in the assessment of candidates between the regional commandant of the SFS and the *starosta*.

#### 4. DISMISSAL OF A DISTRICT COMMANDANT OF THE STATE FIRE SERVICE

The district (municipal) commandant of the SFS may be dismissed by the regional commandant of the SFS after consultation with the *starosta*. The provision of Article 12(3) applies respectively (Article 13(3) of the SFS Act). This provision constitutes the formal and legal basis for the dismissal of a district commandant of the SFS.

A firefighter performing his/her duties in an official, appointed post can be dismissed from that post at any time, immediately or within a specified period of time, by the body entrusted with the appointment. The dismissal of a firefighter from his/her official post, referred to in Section 1, does not result in the termination of the official relationship (Article 31a(1–2) of the Polish Fire Service Act). Article 31a of the SFS Act constitutes the material and legal basis for the dismissal of a district commandant firefighter.

In the legal doctrine there is no statement on the appointment and dismissal of a district commandant of the SFS. Some aspects of the appointment and dismissal have been clarified by court rulings, mainly of administrative courts. This jurisprudence is essentially uniform. On the basis of these rulings practically uniform lines of jurisprudence have emerged, which should be assessed positively and approved.

#### 4.1. Nature of the appeal decision

One has to agree with the court rulings that indicate the discretionary nature of the decision to dismiss a district commandant of the SFS. The dismissal of a district commandant is of an administrative discretionary nature and results from the legislature not establishing specific criteria to justify a dismissal. The service relationship of an appointed firefighter is organisational in nature and does not benefit from any special legal protections characteristic of appointments, the termination of which is possible only in cases specified by law.<sup>22</sup> A voivodeship commandant dismissing a district commandant has total freedom in his/her decision.<sup>23</sup>

“The court examines whether the decision is not arbitrary, i.e. whether the authority issuing the decision gathered all the evidence and chose a specific way of settling the case, after a comprehensive and thorough examination of all the factual circumstances. On the other hand, the lack of premises, which should be followed by the body, when dismissing a firefighter from his/her post, makes it impossible for the court to verify the decision. It is also difficult to control the decision in terms of its compliance with the provisions of procedural law, given that the decision may be taken at any time or immediately, while the lack of premises which would determine the possibility of dismissal from the post excludes the need to demonstrate the legitimacy of decisions taken on this basis.”<sup>24</sup>

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<sup>22</sup> Ref. no. I OSK 921/11; ref. no. II SA/Wa 87/09; ref. no. II SA/Wa 1808/10; ref. no. I OSK 324/06; ref. no. II SA/Wa 1146/06; judgment of the Provincial Administrative Court in Warsaw of 22 April 2008, ref. no. II SA/Wa 227/08, *Legalis* no. 164184; judgment of the Provincial Administrative Court in Warsaw of 21 March 2019, ref. no. II SA/Wa 1431/18, *Legalis* no. 2295600; judgment of the Provincial Administrative Court in Warsaw of 26 February 2008, ref. no. II SA/Wa 1737/07, *Legalis* no. 838342. Cf. judgement of the Supreme Administrative Court of 8 April 2008, ref. no. I OSK 648/07, *Legalis* no. 117452 and the judgement of the Supreme Administrative Court of 18 February 2010, ref. no. I OSK 1133/09, *Legalis* no. 223649.

<sup>23</sup> Ref. no. II SA/Wa 227/08.

<sup>24</sup> Ref. no. II SA/Wa 87/09; ref. no. II SA/Wa 1808/10; ref. no. II SA/Wa 227/08; ref. no. II SA/Wa 1431/18; ref. no. II SA/Wa 1737/07.

## 4.2. Reasons for dismissal

The most common reason for dismissing a district commandant of the SFS from their post is a loss of confidence by their superiors, which results from specific factual circumstances. It is rightly recognised in court jurisprudence that: “Once there is a loss of confidence, if specific circumstances are demonstrated that may raise doubts about the advisability of keeping a person in a managerial position, there are reasons justifying dismissal. The loss of trust results from the subjective assessment of the superior and not from objectively occurring reasons. The loss of confidence cannot be effectively challenged in a situation where the authority has demonstrated facts justifying the loss of confidence.”<sup>25</sup>

When a loss of trust is invoked, it should be supported with indications of the reason behind it, particularly if the dismissed district commandant has an excellent service record, is quickly promoted and repeatedly awarded and honoured, and has good relations with the district authorities.<sup>26</sup>

The court decisions indicated the reasons for the loss of trust, which in turn became the reason for dismissing the district commandants. The indications of the courts should be regarded as accurate. A loss of trust may result from a conflict between a regional SFS commandant and a district SFS commandant.<sup>27</sup> The loss of trust may also result from an ad hoc inspection, in which irregularities were found in their organisation of service, management of an SFS unit, or behaviour towards other firefighters.<sup>28</sup> The reason for dismissal may be the final conclusions from a post-inspection report concerning potential irregularities, for example, related to the participation of district commandants in the course for vehicle appraisers or their possession of several mobile phone subscriber cards.<sup>29</sup> A lack of availability of the district commandant may also be a reason for dismissal. The court rightly pointed out that “after all, it is obvious that persons in managerial positions must be characterised by full availability and which the applicant, due to her sick leave, could not demonstrate. On the other hand, her reliance on the argument that her duties were performed by a deputy is all the more misplaced, since in principle every organisational structure has such a position, but not in order to permanently perform the duties of a superior.”<sup>30</sup>

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<sup>25</sup> Ref. no. I OSK 921/11; ref. no. II SA/Wa 87/09; ref. no. II SA/Wa 1808/10; ref. no. I OSK 324/06; ref. no. II SA/Wa 227/08; ref. no. II SA/Wa 1431/18.

<sup>26</sup> Ref. no. II SA/Wa 1737/07.

<sup>27</sup> Ref. no. I OSK 921/11; ref. no. II SA/Wa 1808/10.

<sup>28</sup> Ref. no. II SA/Wa 87/09.

<sup>29</sup> Ref. no. II SA/Wa 1431/18.

<sup>30</sup> Judgment of the Provincial Administrative Court in Warsaw of 11 May 2010, ref. no. II SA/Wa 1981/09, Legalis no. 619402.

“In the case there was no violation of the presumption of innocence. The provisions of the professional statute for firemen relating to the loss of trust by a superior do not link the possibility of appeal with the fact of a criminal conviction. Hence, certain too firm and final statements used by the authority in the appealed decision, e.g. «in connection with having committed an act» should only be treated as unauthorised and premature, but as a rule not affecting the correctness of the decision itself.”<sup>31</sup>

“The refusal to carry out an inspection, the refusal to allow an inspection, the polemic against the content of an order given by a superior, including the lack of discipline of subordinates, could be reasonable grounds for the authority to consider that the appellant had lost the confidence of his superior resulting in his dismissal from the post of commandant of the State Fire Service. It is not necessary to prove all the facts constituting the grounds for the decision to dismiss. It is sufficient to confirm the occurrence of the majority of events that are the cause of the loss of trust of the superior.”<sup>32</sup>

It is necessary to agree with the uniform line of judicial decisions that a dismissed district commandant of the SFS does not enjoy the protection to which trade union members are entitled under Article 32 of the Trade Union Act.<sup>33</sup>

In one court decision, a view was expressed to the effect that: “The justification for the dismissal of an officer from his/her official post may, in principle, be very laconic. The lack of prerequisites defining the possibility of removal from a post excludes the necessity to prove the legitimacy of decisions taken on this basis. The justification of the decision in this type of cases may in fact boil down to statements on the autonomous right of the authority in the selection of personnel, without the need to prove the lack of appropriate qualifications, merits, achievements or assessments.”<sup>34</sup> This ruling can only be partially agreed with. Taking into account the rulings quoted earlier, it should be acknowledged that the grounds for dismissal should be indicated in the justification of the decision to dismiss a district commandant, although the regulations do not indicate what the grounds for dismissal of a district commandant of the SFS are. In addition, facts supporting such a reason must be indicated and these must be at least mostly proven by the evidence gathered. The administrative court will not investigate whether a reason for dismissal is reasonable and purposeful, because the regulations do not specify proper reasons for dismissal. However, it is necessary to state the reason for the appeal in the grounds of the appeal decision in order to make the decision as transparent as possible.

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<sup>31</sup> Ref. no. II SA/Wa 1431/18.

<sup>32</sup> Ref. no. I OSK 324/06.

<sup>33</sup> Ibid.; judgment of the Supreme Administrative Court of 14 October 2005, ref. no. I OSK 131/05, Legalis no. 1123599.

<sup>34</sup> Ref. no. II SA/Wa 227/08.

### 4.3. Power of the *starosta*'s opinion

It was rightly pointed out in a uniform court jurisdiction that obtaining an opinion of a *starosta* concerning the dismissal of a district commandant of the SFS is not obligatory. For the dismissal it is sufficient for the regional commandant of the SFS to request an opinion from the *starosta*.<sup>35</sup> “It is not important for the authority taking the decision whether the *starosta*'s opinion is positive or negative. Such an opinion may influence the decision made by the authority, but it cannot determine the will of the authority which has the right to decide.”<sup>36</sup>

### 4.4. Applicability of Article 12(3) of the SFS Act

Pursuant to Article 13(3) of the SFS Act, a district (municipal) commandant of the SFS can be dismissed by the regional commandant of the SFS after consultation with the *starosta*. The provision of Article 12(3) applies accordingly. Pursuant to the provision of Article 12(3) of the SFS Act, in the absence of the opinion referred to in Section 2,<sup>37</sup> the minister in charge of internal affairs shall dismiss the regional commandant of the SFS 14 days after the request for dismissal was submitted.

According to the views of the legal sciences and the decisions of the Supreme Court and administrative courts referring to them, it should be indicated that the term ‘accordingly’ (apply the provisions of law) should be understood to mean that some provisions indicated for appropriate application should be applied without any changes in their disposition to the indicated scope of reference, other provisions should be applied with some changes in their disposition to the indicated scope of reference, and others still cannot be applied at all to the indicated scope of reference [Nowacki 1964, 367–76; Kała 2012, 39].<sup>38</sup>

It has been rightly pointed out in court rulings that pursuant to Article 13(2) of the SFS Act, a municipal commandant of the SFS may be dismissed by the regional commandant of the SFS after consultation with the *starosta*. The provision of Article 12(3) of the Act applies accordingly, which means that in the absence of such an opinion, the regional commandant of the SFS shall dismiss the municipal commandant of fire service 14 days after the day the request for dismissal is presented.<sup>39</sup>

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<sup>35</sup> Ref. no. II SA/Wa 1146/06; ref. no. II SA/Wa 1431/18; judgment of the Supreme Administrative Court of 4 December 2002, ref. no. II SA 744/02, Legalis no. 99988.

<sup>36</sup> Ref. no. II SA/Wa 1808/10; ref. no. II SA/Wa 227/08; ref. no. II SA/Wa 1431/18.

<sup>37</sup> This is in regards to the opinion of the governor.

<sup>38</sup> Resolution of the Supreme Court of 23 May 2006, I KZP 6/06, Legalis no. 74446.

<sup>39</sup> Judgment of the Provincial Administrative Court in Warsaw of 28 September 2004, ref. no. II SA 1460/03, Legalis no. 1134032.

#### 4.5. Application of the Code of Administrative Procedure

A certain divergence has emerged in court rulings as to whether the Code of Administrative Procedure should be applied in the procedure for dismissing a district commandant of the SFS and to what extent. In one of the judgments it was indicated that: “Once again it should be emphasised that the Act on the State Fire Service contains a comprehensive regulation in this respect both as to the material basis and the procedure, it does not contain an appeal to apply the provisions of the Code of Administrative Procedure in matters not regulated in the quoted Act. It should be noted that this special procedure concerns only the dismissal of a firefighter from a position held on the basis of appointment.”<sup>40</sup> We can partially agree with this statement, as far as the claim that the SFS Act contains the material and procedural basis for the dismissal of a district commandant of the SFS is concerned. However, in the procedure for dismissing a district commandant of the SFS, the Code of Administrative Procedure should be applied, even if the SFS Act does not explicitly provide for such dismissal.

One has to agree with the decision of the court, in which it was reasonably indicated that: “The Commandant of the State Fire Service, adjudicating in the case as an appeal body, and the Świętokrzyskie Regional Commandant of the State Fire Service, taking decisions on the dismissal of the applicant<sup>41</sup> from his former position, were bound by the rigours of administrative procedure. Thus, they should observe the principle of pursuing the material truth (Article 7 CAP), and thus take all steps necessary to clarify the facts accurately. They were obliged to duly and exhaustively inform the party about factual and legal circumstances that could have an impact on the establishment of its rights and obligations being the subject matter of the administrative proceedings (Article 9 CAP). Finally, they had to exhaustively collect, consider and evaluate all the evidence (Article 77(1) and Article 80 CAP) and justify their decision according to the requirements set out in Article 107(3) CAP.”<sup>42</sup>

A decision to dismiss a district commandant may be made immediately enforceable.<sup>43</sup>

### 5. DISMISSAL OF A DISTRICT POLICE COMMANDANT

The views expressed in the court rulings concerning the dismissal of a district commandant of the SFS are legitimate and valid, as confirmed by the doctrine of law and the court rulings concerning the dismissal of a district

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<sup>40</sup> Ref. no. II SA/Wa 1146/06.

<sup>41</sup> A county fire commandant.

<sup>42</sup> Ref. no. II SA/Wa 1737/07.

<sup>43</sup> Ref. no. II SA/Wa 1808/10.

commandant of the SFS. When interpreting the provisions on the dismissal of a district commandant of the SFS, it is reasonable to use the views expressed regarding the provisions on the dismissal of a district commandant of police. In the doctrine and court judgements it is uniformly and rightly indicated that the opinion of a *starosta* in a procedure for dismissing a district police commandant is not binding. The regional commandant is only obliged to request such an opinion from the *starosta*. However, if the former does not receive an opinion within 14 days of requesting it, he/she may dismiss the district police commandant on his/her own [Kotowski 2012, 189; Świerczewska-Gąsiorowska 2015, 72; Sęk and Obrębski 2009, 291–300; Siwek 2012, 174].<sup>44</sup>

One must agree with the uniform views of the courts with regard to the prerequisites and grounds for dismissal of a district police commandant. The provisions “do not give grounds for assuming that dismissal from the post of district police commandant should be justified in a special way. The legislator has not introduced any conditions on the fulfilment of which dismissal from this post is conditional. The lack of specific criteria means that the decision in this matter is left to the discretion of the competent public administration body, which at any time, when assessing the suitability to manage a subordinate organisational unit, due to the nature of the service performed, may dismiss a police officer from the position of the head of the unit. Thus, the assessment of suitability both upon appointment to the post of district police commandant and upon dismissal from this post is left to the regional police commandant, who performs his tasks with the help of the police headquarters subordinate to him. The condition for appointment, in addition to professionalism and experience, is the confidence that the person appointed to the position has in the appointing authority, and the loss of confidence necessary to perform the function is the basis for dismissal from the position.”<sup>45</sup>

“The Court hearing the complaint shares the views expressed in the case law that the dismissal of a police officer from a position held on the basis of appointment is the prerogative of the authority and is characterised by discretion. It is not apparent from the wording of this provision that there are special grounds or reasons for dismissal, as it does not contain specific criteria justifying the dismissal of a district police commandant from his post by the regional police commandant. The term «at any time», without any supplementation with material and legal prerequisites for interfering with the official

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<sup>44</sup> Judgment of the Provincial Administrative Court in Warsaw of 3 September 2009, ref. no. II SA/Wa 663/09, Legalis no. 228811.

<sup>45</sup> Judgment of the Provincial Administrative Court in Warsaw of 18 October 2019, ref. no. II SA/Wa 411/19, Legalis no. 2385209; judgment of the Provincial Administrative Court in Warsaw of 18 April 2016, ref. no. II SA/Wa 1684/15, Legalis no. 1471450; judgment of the Provincial Administrative Court in Warsaw of 6 June 2019, ref. no. II SA/Wa 1890/18, Legalis no. 2294394.

relationship, makes this regulation provide full discretion and even freedom in decision-making by an authorised body.”<sup>46</sup>

“Judicial review of a decision to remove an officer from a functional position is limited, which is due to the lack of grounds that the authority should be guided by when removing an officer from an official position. The court examines the legality of the decision, but does not inquire into the purposefulness of the decision made and the decision contained therein. Such decisions are excluded from judicial review to the extent to which the administrative authority exercises its discretion within the limits granted to it by the provisions of substantive law. In such cases the administrative court, due to its constitutionally (Article 184 of the Constitution of the Republic of Poland) specified tasks of judicial control of administration, cannot constitute a «third instance» of administration and replace the administrative body in resolving an administrative case. The specificity of this type of adjudication also limits the procedure of taking evidence, regulated in the Code of Administrative Procedure. The lack of prerequisites defining the possibility of dismissal from a position excludes the need to demonstrate the legitimacy of decisions taken on this basis and to conduct evidence proceedings aimed at determining all grounds for dismissal (see judgments of the Supreme Administrative Court of 8 April 2008, ref. no. I OSK 648/07 and of 10 May 2011, ref. no. I OSK 1446/10 – judgments of administrative courts are available in an online judgment database at: [orzeczenia.nsa.gov.pl](http://orzeczenia.nsa.gov.pl)).”<sup>47</sup>

“Transferring the above comments of a general nature to the case at hand, it must be borne in mind that the regional police commandant had lost confidence in the applicant and it was within his discretion to assess the advisability of keeping the applicant in a managerial position. The loss of trust results from a subjective assessment of certain facts by the superior, not the subordinate. It should be noted here that the authority of first instance referred to a specific incident of 14 March 2018, which also formed the basis for initiating disciplinary proceedings against the applicant. In addition, the correctness of the position of the body of first instance is strengthened by the results of the questionnaire conducted on 16–17 July 2018 by the Psychologists’ Section of the Provincial Police Headquarters in [...] among persons (police officers and civilian employees) from the unit headed by the applicant. These results indicate that the persons participating in the study even fear the return of the complainant” [Kotowski 2012, 189–90; Świerczewska-Gąsiorowska 2015, 73].<sup>48</sup>

It is necessary to agree with the court’s view that when issuing a decision on the dismissal of a district police commandant, the commandant commandant

<sup>46</sup> Ref. no. II SA/Wa 411/19; ref. no. II SA/Wa 1684/15; ref. no. II SA/Wa 1890/18.

<sup>47</sup> Ref. no. II SA/Wa 1981/09; ref. no. II SA/Wa 411/19; ref. no. II SA/Wa 1684/15; ref. no. II SA/Wa 1890/18.

<sup>48</sup> Ref. no. II SA/Wa 1981/09; ref. no. II SA/Wa 411/19; ref. no. II SA/Wa 1684/15.



and the provincial commandant are obliged to apply Articles 6, 7, 77(2), 80, and 107(3) of the Code of Civil Procedure, as well as with a more far-reaching view that: “Despite the fact that the provision of Article 6c of the Police Act of 06 April 1990 (Journal of Laws of 2002, No. 7, item 58 as amended) does not refer directly to the provisions of the Code of Administrative Procedure, the application of the provision of Article 106 CAP is fully justified. There is no doubt that the proceedings for the dismissal of a municipal police commandant are administrative proceedings and are conducted on the basis of the provisions of the Code of Administrative Procedure, so they also apply to the proceedings conducted in order to issue an opinion by a co-operating body. Moreover, Article 106 CAP will not apply only in situations where it is expressly provided for in the substantive law.”<sup>49</sup>

The court rightly held that: “In a case, there must be actual and concrete occurrences arguing against leaving a particular officer in his former post, and the decision cannot be attributed the characteristic of arbitrariness. This is not the situation in this case. In a very extensive decision, in which the authority mainly analysed the grounds to be followed when dismissing a police officer from his/her former post and transferring him/her to his/her disposal, there was no justification of the actual and concrete grounds in relation to the person of the applicant. The personnel order issued by the authority of first instance merely stated that in connection with the situation occurring on [...] and [...] June 2018 at [...] in S. at the training of the managerial staff of the Lubuskie garrison and the accompanying media coverage of the incident, resulting in the loss of confidence in the complainant by his superiors, there was a need to dismiss the complainant from his previously held position and to transfer him to his disposal. It was also pointed out that the complainant, while on duty in a managerial position, should refrain from behaviour exposing the police to a loss of public confidence. In the case, it has not been shown in any way what situation occurred during the training in question, whether the media coverage referred to was caused by the applicant’s behaviour or attitude and, most importantly, what behaviour the applicant R.K. should refrain from. The staff order in question does not indicate in any way why there was a loss of confidence in the applicant on the part of his superiors. Not a single real and concrete reason causing it was indicated.”<sup>50</sup>

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<sup>49</sup> Judgment of the Provincial Administrative Court in Gliwice of 12 June 2007, ref. no. IV SA/Gl 1349/06, Legalis no. 112720.

<sup>50</sup> Ref. no. II SA/Wa 1890/18.

## CONCLUSIONS

The historical legal interpretation does not provide fundamental answers on the subject of appointments and dismissals of district commandants of the SFS. The lack of doctrinal and case-law statements on the subject in the past does not allow to continue or change the doctrinal or case-law lines or to relate them to the interpretation of the current legal state.

The function of district commandant is found only in the SFS and the police; it does not exist in other uniformed services. According to court rulings, it is possible to use the views of doctrine and jurisprudence expressed with respect to legal regulations on the police in order to interpret legal regulations related to the appointment of district commandants in the SFS.

A firefighter appointed to the post of district commandant of the SFS must be an officer. When appointing him/her, his/her education, experience, and length of service should be taken into account. The appointment is an administrative discretion, and the regulations do not contain specific requirements to be fulfilled by a candidate for this function. The regional commandant of the SFS should have confidence in the candidate appointed to the position of the district commandant.

In the three-stage procedure for appointing a district commandant, the regional commandant of the SFS and the *starosta* play a crucial role. If a *starosta* obstructs the candidates presented by a regional commandant, the voivode 'enters into' the appointment procedure, having the right to select a person for the position of district commandant from several candidates presented by the regional commandant.

The model of appointing a district commandant of the SFS defined by the law should be evaluated positively and should be kept in the current legal system. The legitimacy of this model results from the dominant role of the regional commandant in the appointment procedure and from the cooperation of public administration bodies (i.e. the *starosta* and the voivode) with the district commandant, after his/her formal appointment, in carrying out tasks in the field of fire protection in the territory of the district and the voivodeship. The validity of this model is confirmed by its long history in the system of law, with minor corrections resulting from political changes that have taken place in Poland over the past few decades.

The dismissal of a district commandant of the SFS is discretionary, and the regulations do not specify grounds for dismissal. In practice, the main reason for dismissal appears to be a subjective loss of trust on the part of the regional commandant of the SFS, which may result, for instance, from a conflict with the regional commandant or from irregularities in the management of the district commandant. The reason for the loss of trust should be indicated in the decision to dismiss the district commandant and

should be based on the evidence gathered in the appeal proceedings. In order to dismiss a district commandant, it is sufficient for the regional commandant of the SFS to request an opinion from the *starosta*. The regional commandant does not have to wait for the *starosta*'s opinion and may even dismiss the district commandant against the *starosta*'s advice. In the procedure for the appointment and dismissal of a district commandant, the Code of Administrative Procedure should be applied.

In order to resolve legal doubts in the procedure for appointing and dismissing a district commandant of the SFS, one may apply the views of the legal doctrine and court rulings expressed in relation to the appointment and dismissal of a district commandant of the police, which are consistent with the views of court rulings regarding the appointment and dismissal of a district commandant of the SFS.

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