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TAXATION OF INHERITANCE AND DONATION ACQUISITION IN UKRAINE

Introduction

In connection with the introduction of the reform of the Ukrainian tax system on 1 January 2011, it can be said that the main legal acts regulating this system are:

- Constitution of Ukraine of 28 June 1996[1],
- Law of 2 December 2010 No. 2856-VI (2856-17), Tax Code of Ukraine[2],
- Law of 8 July 2010 on the collection and registration of unified contribution for compulsory state social security[3].

It should be noted, however, that the Law amending the Tax Code of Ukraine[4], which entered into force on 1 January 2015, reduced the number of nationwide taxes from 22 to 11. Thus, the most important among national taxes are corporate income tax, personal income tax, VAT, excise duty, environmental tax, concession tax, and customs duty. Among local taxes: tax on immovable property other than land and flat-rate tax.

This solution directly indicates that Ukraine does not have a separate law on inheritance and donation tax or tax on free acquisition of property and property rights, like Poland. Importantly, the Tax Code of Ukraine regulates not only the taxation of inheritance and donation acquisition (Art. 174), the military fee tem-

[1] Vidomosti Verhownoi Rady Ukrainy 1996, No. 30, Item 141 as amended.

[2] Vidomosti Verhownoi Rady Ukrainy of 8 April 2011, No. 13/13–14, No. 15–16, No. 17, Art. 112, p. 556 – hereinafter referred to as the TCU.

[3] Vidomosti Verhownoi Rady Ukrainy of 21 January 2011, No. 2/2–3, Art. 11, p. 34 – hereinafter referred to as the uniform social security contribution.

[4] Law of 28 December 2014, No. 71 – VIII amending the Tax Code of Ukraine and certain other laws of Ukraine in the field of tax reform, Vidomosti Verhownoi Rady Ukrainy of 20 February 2015, No. 7–8; of 27 February 2015, p. 55, 506, No. p. 410, Art. 55.

porary tax (Section XX of the Tax Code of Ukraine) collected on the acquisition of inheritance and donation, but in terms of taxation of donation only, and only in relation to the employer-employee relationship, a tax called the uniform social security contribution applies.

It is obvious that in the case of inheritance and donation taxation, the provisions of the Civil Code also play an important role due to the principle of uniformity of the legal system of each state, including the Ukrainian state. Ukraine is governed by the Civil Code of Ukraine of 16 January 2003[5].

Taxes in the Constitution of Ukraine

The Ukrainian Constitution devotes several provisions to tax issues, the most important of which are Art. 58, 67, 92(1), and 143.

The text of Art. 67 of the Constitution establishes obligations for everyone, including both residents and non-residents, to pay taxes and debts, which should be understood as tax debts. However, this text has a narrower objective scope than Art. 84 of the Constitution of the Republic of Poland, which uses the broader term "responsibilities and public duties". Moreover, Art. 67, paragraph 2 of this Constitution establishes the obligation of all citizens – so it does not apply to non-residents, unless they have Ukrainian nationality – to submit an annual declaration of their wealth and income in the previous year to the tax authorities in their place of residence. In particular, the obligation to submit tax and income declarations should be emphasized here, as it is not regulated at the constitutional level in Poland. However, it cannot be understood as the only provision imposing such an obligation.

It is also imposed by Art. 92, paragraph 1 and Art. 143 of the Constitution of Ukraine. These provisions should be understood as systemic. It follows from Art. 92, paragraph 1 of the Constitution of Ukraine that the "tax system, taxes and charges (…) are determined exclusively by the laws of Ukraine". However, this provision should be understood more broadly than as simply referring to the establishment of taxes. It seems that this provision should be understood in conjunction with Art. 1 of the Constitution of Ukraine, which indicates that Ukraine is a democratic state under the rule of law. This means that in a democratic state under the rule of law not only the type of taxes but also the individual parts of the tax structure should be regulated by laws (acts)[6]. This provision also requires that the tax system be regulated by laws. This term should be understood as including not only legal regulations concerning tax institutions but also the structure of entities that collect taxes (national and local government), pay them

[5] Vidomosti Verhownoi Rady Ukrainy of 2003, No. 11, Item 461 as amended.

[6] Seemingly, despite the doctrinal disputes concerning this issue, the parts of the tax structure include the object and subject of taxation, tax base, tax rates, and general categories of tax-exempt entities.

(taxpayers, withholding agents, and collectors), as well as those which determine their amount and terms of payment. This term therefore reinforces the aforementioned understanding of tax regulation by law.

Another provision of the Constitution of Ukraine related to taxes is Art. 143, from which the principle of tax authority of local government follows. It is equivalent to Art. 168 of the Constitution of the Republic of Poland. It introduces the right of local government to not only determine, but also to collect taxes, except that these ranges are specified in laws. However, this provision cannot be interpreted as allowing local government units to establish their own taxes. Such an understanding of it would lead to its contradiction with Art. 92, paragraph 1 of the Constitution of Ukraine. Its point is that local government units may determine, to the extent indicated in a specific law, certain elements of the local tax and fee structure.

Article 58, paragraph 1 of the Constitution of Ukraine (equivalent to Art. 2 of the Constitution of the Republic of Poland to a certain extent) is also significant for tax issues, stating that laws and other normative acts do not have a retroactive effect, except in cases relaxing or waiving individual obligations. It can be said here that it introduces the principle of non-retroactivity, unless the law introduces retroactive legal solutions that are beneficial to citizens. Retroactive relaxation or waiver of obligations is undoubtedly a beneficial action for citizens. Characteristic of the provisions of the Constitution and the Tax Code of Ukraine is the fact that the tax system should be stable, which means that the state undertakes that changes in the applicable tax law for a given tax year may be implemented at the latest six months before the end of the calendar year, while the taxes and fees and the applicable tax rates may not change during the tax year.

It should also be noted whether the Constitution of Ukraine protects the right to property and the right to inheritance. In fact, it contains no explicit provisions stipulating the protection of the right to inheritance. The protection of the right to property is stipulated in Art. 41, paragraphs 1 and 6. They grant everyone the right to own, use and dispose of their property, indicating that the procedure for acquiring private property is determined by laws. Moreover, the use of property shall not cause harm to the rights, freedoms and dignity of citizens, the interests of society, aggravate the ecological situation and the natural qualities of land.

This means that, at the constitutional level, the right to inheritance is a part of the right to protect private property.

Taxation of inheritance and donation acquisition

Taxation of inheritance and donation in Ukraine is regulated by the provisions of the Tax Code of Ukraine in Section IV Individual Income Tax. This means that inheritance acquisition and donation are subject to the rules of taxa-

tion of income earned by natural persons. This position is justified to a certain extent because both inheritance and donation tax and personal income tax are levied on income (revenue), i.e., in fact, economic growth of pure property[7]. There are, of course, differences between them, such as the fact that inheritance and donation tax is levied on the exchange of property, the transfer of property between the existing and the new owner, which, as a one-time action, takes place exclusively free of charge. Thus, in a way, it is a special form, a variant of income tax, except that this tax includes an increase in pure assets obtained over a certain period of time, regardless of whether this increase is obtained from permanent or one-time sources of income. Naturally, in this case, the personal or family relationships existing between the participants in this exchange are irrelevant. If it is taken into account that they do not play a role in taxation, this increase in assets can in fact be taxed with income tax.

Article 174 is the most relevant provision of Section IV. It stipulates that income earned by a taxpayer from an inheritance, donation of money, property, real estate or non-property rights is subject to income tax. At the same time Art. 174, paragraph 1, letters a–c of the Law specify enumeratively listed items acquired by way of inheritance/donation that are subject to taxation. Thus, the subject of taxation is not the "acquisition of property and property rights" (a category-specific subject), but strictly defined items and property and non-property rights. These include: 1) real estate; 2) movable property, in particular: antiques or works of art, natural precious stones, precious metals, jewellery of precious metals or natural precious stones, vehicles and their accessories, and other movable property; 3) objects of commercial property, namely securities (other than deposits, savings, mortgage certificates), equity rights, ownership of a business object itself (ownership of an integral property complex), intellectual (industrial) property or the right to obtain income from it, property and non-property rights; 4) amount of insurance indemnities (insurance payments) under insurance contracts, as well as the amount kept respectively on pension deposit account, accumulation pension account, individual pension account of heir – participant of accumulation pension fund scheme; 5) cash money or funds, kept on estate-leaver's (testator's) accounts, opened in bank and non-bank financial institutions, including deposits (savings), mortgage certificates, certificates of real estate transactions fund. Characteristic of this provision is the fact that it does not infringe upon the principle of definiteness of the subject of taxation, with one reservation concerning the list of movable property (Art. 174, paragraph 1, letter b of the TCU), where "other kinds of movable property" are indicated as the subject without any indication of how they should be determined. Moreover, the subject of taxation defined in this manner does not refer to the concept of inheritance. According to Art. 1218 of the Civil Code of Ukraine, "Inheritance shall include all rights and obligations of the testator as of the moment

[7] R. Mastalski, *Prawo podatkowe*, Warszawa 2004, p. 344.

of opening of inheritance that did not terminate in consequence of the testator's death". Those rights and obligations which do not form part of the inheritance are set out in Art. 1219. According to it, "1. The rights and obligations inseparably connected with the testator shall not be included in the inheritance, particularly: 1) personal non-property rights; 2) the right to participation in partnerships and the right to membership in associations of citizens, unless otherwise established by law or the constituent documents thereof; 3) the right to compensation of damages resulting from mutilation or other health disturbance; 4) rights to alimony, pension, aids or other payments established by law; and 5) creditor's or debtor's rights and obligations envisaged by Art. 608 of this Code". It would seem that in the case of Art. 174 of the TCU, the principle of autonomy of tax law applies; however, when comparing Art. 174, paragraph 1, letter c, which levies taxes on, among other things, corporate rights, it should be obvious from the point of view of Art. 1219 of the Civil Code of Ukraine that it is a matter of taxing these rights, when the laws or founding documents stipulate that these rights are included in the inheritance and heirs acquire them. Likewise, "the right to compensation of damages resulting from mutilation or other health disturbance" (Art. 1219, paragraph 3 of the Civil Code of Ukraine) should probably be understood similarly, as not included in the inheritance because it is related to the person of the testator, when it has not been adjudged or paid. Otherwise, it is included in the inheritance and will be taxed as "amount of insurance indemnities (insurance payments) under insurance contracts" or as "cash money" (Art. 174, paragraph 1, letters d and e of the TCU). Pursuant to Art. 174 § 6 of the Code, income in the form of gifts charged (paid, transferred) to the taxpayer by a legal person or an entrepreneur is subject to taxation under the general rules stipulated in Section IV.

The provision of Art. 174 of the TCU does not regulate the tax base of items acquired as a result of inheritance or donation. It also does not indicate the condition used to determine inherited or donated property, nor does it indicate what prices constitute the value of the tax base. This would mean that the general rules for determining the tax base set out in Art. 164, paragraph 1, item 1 of the TCU apply, namely that "Total taxable income consists of incomes, finally taxable during their accrual (payment, provision)". Therefore, in this case, the moment of payment is decisive. In the case of real estate and movable property, the price of the estimate prepared by the authority authorized to make such an estimate is decisive (Art. 172, paragraph 3 of the TCU). It should be noted, however, that Art. 174, paragraph 8 of the TCU stipulates that in the case of inheritance of any assets at a zero rate, no estimated value of the assets shall be determined, as they do not affect the annual tax.

As far as the tax rates are concerned, the basic rate of income tax is 18% (Art. 167, paragraph 1 of the Tax Code of Ukraine), except that for heritage objects they are subject to zero-rate taxation (Art. 174, paragraph 2, item 1 of the Code), if it applies to:

- objects inherited by family members, heirs of the first and second degree of relationship,
- real estate and movables inherited by a person who is a person with disabilities of group I (assigned as such) or has a status of an orphan or a child deprived of parental care,
- real estate and movable property inherited by a disabled child (and thus whether or not it belongs to first- and second-degree heirs),
- money savings, deposited before 2 January 1992 in institutions of the USSR Savings Bank and state insurance, which were effective in the territory of Ukraine, and in state securities, and money savings of citizens of Ukraine, deposited in specific banks during 1992–1994, the redemption of which did not occur.

The taxpayers of personal income tax in Ukraine are natural persons (Art. 162, paragraph 1, item 1 of the Code), i.e. both residents (including foreigners who have registered their business) and non-residents (Art. 162, paragraph 1, item 2 of the Code). According to Ukrainian tax regulations, a foreigner may be considered a resident if they meet one of the following criteria (successively): 1) they a residence in Ukraine; 2) they reside permanently in Ukraine (in case of residence of a given natural person both in Ukraine and outside of Ukraine); 3) they have close personal or economic ties with Ukraine (centre of their interest, in case of permanent residence of a given individual both in Ukraine and outside of Ukraine), and in case it is impossible to determine the aforementioned grounds – they stay in Ukraine for over 183 days in a year (including the day of arrival to and departure from Ukraine). In other cases, a given natural person is considered as a non-resident of Ukraine.

The recognition of an individual as a Ukrainian tax resident means that both income earned in Ukraine and income earned from sources abroad will be taxed for them. Non-recognition as a resident of Ukraine means that only income obtained from Ukrainian sources will be taxed for this person.

In the case of inheritance and donation taxation, the taxpayers are the heirs and beneficiaries regardless of nationality. What's significant is the acquisition of inheritance or donation items located in Ukraine.

Characteristically, the provisions of the Tax Code of Ukraine do not indicate heirs of the first and second degree of kinship. However, given the systemic interpretation and the use of the civil law term in the tax provision (Art. 1261 and 1262 of the Civil Code of Ukraine), it should be assumed that the first degree of kinship includes the testator's children, including those conceived during the testator's lifetime and born after the testator's death, the surviving spouse and their parents, while the second degree of kinship includes the testator's brothers and sisters, the testator's grandmother and grandfather on both father and mother's side. Naturally, these are statutory heirs, and since heirs may also be ap-

pointed to inheritance by will (Art. 1222, paragraphs 1 and 2 of the Civil Code of Ukraine), it should be assumed that the aforementioned heirs of first and second degree of kinship also benefit from the aforementioned tax relief if their appointment is based on a will.

A similar view should be stated in relation to the donation agreement. If the beneficiary is included in the first or second degree of kinship, the rules of taxation of the acquired objects will be the same as in the case of heirs. The provisions of the Tax Code of Ukraine do not define the concept of donation, although they use it. It seems that this term should be understood as in the Civil Code of Ukraine. Article 717, paragraphs 1 and 2 of this Code stipulate that, in a donation agreement, one party (the donor [grantor]) transfers or undertakes to transfer to the other party (the donee [grantee]) the ownership of property (donation [gift]) free of charge (paragraph 1). However, an agreement setting out the obligations of the donee to perform any act, whether financial or not, for the benefit of the donor is not a donation (gift) agreement (paragraph 2). Paragraph 2 refers to the so-called donor's instruction regulated by Art. 893 of the Polish Civil Code. Characteristically, this agreement differs from the donation agreement regulated by Art. 888 of the Civil Code because its subject can only be a transfer of ownership, whereas in Poland the subject can include rights, e.g. limited property rights. The differences also relate to the legal form of the conclusion of the agreement.

If the property is inherited by other heirs, i.e. not included in the first or second degree of kinship, it is subject to a 5% tax rate. In turn, each item of inheritance (Art. 174, paragraph 2, item 3 of the TCU) and donation (Art. 174, paragraph 6 in connection with Art. 174, paragraph 1 of the TCU) acquired by a non-resident is subject to taxation at the basic rate of 18%. Naturally, in Poland, such a variability in the legal position between resident and non-resident heirs cannot exist in relation to non-resident citizens of Member States of the European Union or Member States of the European Free Trade Association (EFTA) – parties to the Agreement on the European Economic Area – due to the principle of free movement of capital and the principle of prohibition of restrictions on payments under Art. 63(1) and (2) of the Treaty on the Functioning of the European Union of 7 February 1992[8]. This provision also introduces the principle of free movement of capital and the prohibition of any restriction on payments not only between Member States but also between Member States and third countries, with the proviso that:

– Art. 65 of the Treaty allows for the application of the relevant provisions in the Member States of their tax laws treating taxpayers differently, according to their different place of residence or investment of capital,

[8] Dz.U. 2004, No. 90, Item 864/30 as amended.

– Member States may take all measures necessary to prevent the infringement of their laws and regulations, in particular in the area of taxation and in the field of prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures justified on grounds of public policy or public security.

However, the measures and procedures referred to above should not constitute means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments.

Since the principles of non-discrimination in relations not only between Member States, but also between Member States and third countries are similar, the legal situation mentioned in Art. 174, paragraph 2.3 of the TCU, with respect to the tax rate, will be well defined by the view of the CJEU presented in the judgment of 17 October 2013 in Case C 181/12 *Yvon Welte v Finanzamt Velbert*, which reads as follows:

"Articles 56 EC and 58 EC must be interpreted as precluding legislation of a Member State relating to the calculation of inheritance tax which provides that, in the event of inheritance of immovable property in that State, in a case where the deceased and the heir had a permanent residence in a third country, such as the Swiss Confederation, at the time of the death, the tax-free allowance is less than the allowance which would have been applied if at least one of them had been resident in that Member State at that time.

Firstly, that national legislation constitutes a restriction on the free movement of capital within the meaning of Art. 56(1) EC.

Secondly, where, for the purposes of taxing immovable property acquired by inheritance and located in the Member State concerned, national legislation places on the same footing (i) non-resident heirs who have acquired the property from a non-resident deceased and (ii) non-resident or resident heirs who have acquired it from a resident deceased and resident heirs who have acquired it from a non-resident deceased it cannot, without infringing the requirements of EU law, treat those heirs differently in connection with that tax as regards the application of a tax-free allowance in respect of the immovable property. By treating inheritances of those two classes of persons in the same way except in relation to the amount of the allowance which an heir may receive, the national legislature accepted that there was no objective difference between them as regards the detailed rules and conditions of charging inheritance tax which could justify a difference in treatment.

However, just as the status of a taxable person does not in any way depend on the place of residence – the legislation at issue subjecting any acquisition of an immovable property located in that Member State to inheritance tax whether the deceased and heir be resident or non-resident – the aim of partial exemption

of the estate affects all those subject to inheritance tax in the Member State in the same way, whether they be resident or non-resident, since that exemption aims to reduce the total amount of the inheritance".

Although the thesis of the judgment concerns only the tax-free allowance, the principle of non-discrimination should also apply to the variability of tax rates between residents and non-residents.

Thus, from the point of view of Art. 63 and 65 of the Treaty (the equivalent of Art. 56 and 58 EC), the provision of Art. 174, paragraph 2.3 of the TCU would be a provision applying the principle of discrimination between citizens of the Member States of the European Union and those of the Member States of the European Free Trade Agreement (EFTA) – parties to the Agreement on the European Economic Area. It should be noted here that since the inheritance acquisition or acquisition by donation in Ukraine is subject to personal income tax, i.e. it is covered by Art. 2 of the Convention of 12 January 1993 between the Government of the Republic of Poland and the Government of Ukraine for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains[9], the presented situation related to taxation of non-resident Polish citizens in Art. 174 of the TCU concerning the tax rate also violates the principle of equal treatment set out in Art. 25, paragraph 1 of the Convention.

Heirs and donees have a tax obligation due to the acquisition of an inheritance or donation, and income from these items must be shown in the annual tax return. Non-residents, on the other hand, are obligated to pay purchase tax upon notarial registration of a monument (in rural areas upon registration by an authorized officer of a competent local government body, at the place where the inheritance is opened). Notaries and authorized officers of competent local government bodies are obligated to provide the controlling body with information about issued certificates of succession or information about certification of donation agreements (Art. 174, paragraphs 3 and 4 of the TCU). The same entities issue documents to heirs and donees for the payment of inheritance and donation tax. Similar obligations apply to insurance agents (Art. 174, paragraph 5 of the Code).

These considerations, which refer to the regulation of inheritance and donation taxation in Ukraine, lead to the conclusion that since the tax rate depends to a large extent on the taxpayer's affiliation with a given kinship group, this undoubtedly distorts the inclusion of these subjects of taxation as subject to income tax and not inheritance and donation tax. Another significant fact is that Art. 174, paragraph 4 of the Code also explicitly refers to inheritance tax and, in the context of Art. 174, paragraph 6 of the Code, we can also speak of inheritance and donation tax. Moreover, this view is supported by the fact that the principles of taxation of inheritances and donations are in fact normatively separated in a single editorial unit.

[9] Dz.U. 1994, No. 63, Item 269 as amended.

Military fee

According to Art. 16[1] sub-section 10 (Other transitional provisions) of Section XX (Transitional Provisions) of the Tax Code of Ukraine, until the entry into force of the Resolution of the Verkhovna Rada of Ukraine on the completion of the reform of the Armed Forces of Ukraine, personal income tax subjects are subject to a military fee (lump-sum military tax), amounting to 1.5% of the acquired assets. The taxpayers of the military fee are both residents and non-residents (Art. 162, paragraph 1, items 1 and 2, and Art. 162, paragraph 3 of the Code). The tax base for residents is salaries and wages taxed at the time of accrual, income taxed at the time of accrual from sources of income originating in Ukraine, foreign income, and thus income obtained from sources located outside Ukraine (Art. 163, paragraph 1, items 1–3 of the Code), and in the case of non-residents, the subject of taxation is the total monthly (annual) income from sources originating in Ukraine and income from sources of Ukrainian origin taxed at the time of accrual (Art. 163, paragraph 2, items 1 and 2 of the Code).

The military fee is also paid by the heirs and the donees (Art. 171 in conjunction with Art. 163 of the TCU). Pursuant to Art. 164 of the TCU, income from an inheritance or donation is included in the general taxable income, which means that it is covered by the general tax base for the entire fiscal year. Similar status is also given to other revenue indicated in Art. 170 of the TCU: revenue from rent, investments, deposits, dividends, prizes, material aid, revenue from life and health insurance, etc.; in Art. 172 of the TCU: revenue from the sale of real estate; in Art. 173 of the TCU: revenue from the sale of cars.

Persons responsible for the accrual (payment) and payment (transfer) of tax (military charge) are the employer who pays the employee's income, and on other income: the tax agent – in the case of income from a source originating in Ukraine – and the taxpayer for foreign income whose source of payment belongs to persons exempt from the obligation to charge, accrue or transfer the tax to the budget (Art. 171 of the Code in conjunction with Art. 16[1], paragraph 1, item 6 of the Transitional Provisions).

Uniform social security contribution

According to Art. 7 of the Uniform Contribution Law, its purpose is to secure the pension fund. It is paid by the employer and calculated on the income earned by the employees. Payment of this contribution by employers is treated as a donation to employees. The contribution rate is 22%. It is included in each payment, i.e. remuneration in cash: basic and additional, incentive and compensation benefits paid, as well as benefits in kind granted on the basis of the Law

on remuneration and remuneration of natural persons for the performance of works (provision of services) under civil law contracts. It should be noted that the Resolution of 22 December 2010 No. 1170 of the Cabinet of Ministers of Ukraine contains a list of different types of payments, made at the expense of employers, which are not covered by the unified contribution to state social security. The maximum level of taxation of all benefits cannot exceed 25 times the minimum wage.

Conclusion

Acquisition of goods and property rights by inheritance and donation in Ukraine is subject to personal income tax, military fee and, with respect to acquisition by donation made by an entrepreneur for the benefit of employees, also to a uniform social security contribution. However, the taxation of inheritance and donation acquisition for the family of the testator or donor is subject to a 0% tax rate and, as no valuation of the property acquired in this way is made, this translates to a tax exemption for the testator's family. However, these persons pay tax in the form of a military fee (amounting to 1.5% of the acquired property) on such acquisition of goods and property rights (described in detail). On the other hand, donations made by employers to employees are subject to the so-called uniform 22% contribution to the mandatory state social security (uniform contribution).

As a consequence of the taxation of inheritance and donation acquisition in Ukraine with personal income tax, the diversified 18% tax rate which discriminates Polish citizens (non-residents) violates the principle of equal treatment under Art. 25(1) of the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, concluded on 12 January 1993 between the Republic of Poland and Ukraine.

Bibliography

Mastalski R., *Prawo podatkowe*, Warszawa 2004.

Summary

The main objective of this article is to introduce the rules of taxation of inheritance and donation acquisition in Ukraine. Its side objective is to demonstrate certain differences between Poland and Ukraine in this respect. The article utilizes a critical analysis of the texts of the Constitution of Ukraine and Ukrainian tax laws as a research method.

The article emphasizes such beneficial solutions for Ukrainian taxpayers as those concerning the deadlines for introducing changes in tax regulations (*vacatio legis*) – substantially longer than in Poland, the impossibility of introducing changes in these regulations during the fiscal year to the disadvantage of taxpayers, and the admissibility of introducing beneficial changes. Discriminatory taxation of Polish citizens (non-residents) with respect to inheritance and donation acquisition in Ukraine is demonstrated.

Keywords: taxation of inheritance and donation acquisition in Ukraine, principle of equal treatment in taxation of inheritance and donation acquisition by non-residents in Poland and Ukraine, military fee (tax), uniform contribution to mandatory state social security in Ukraine, non-discrimination principle

OPODATKOWANIE NABYCIA SPADKU I DAROWIZNY NA UKRAINIE

Streszczenie

Nabycie w drodze spadku i w drodze darowizny rzeczy i praw majątkowych na Ukrainie podlega podatkowi dochodowemu od osób fizycznych, opłacie wojskowej, a w odniesieniu do nabycia w drodze darowizny uczynionej przez przedsiębiorcę na rzecz pracowników – także ujednoliconej składkce na ubezpieczenie społeczne. Jednak opodatkowanie nabycia spadku i darowizny dla osób najbliższych spadkodawcy czy darczyńcy jest objęte stawką podatku wynoszącą 0% a przez to, że nie dokonuje się oszacowania majątku nabytego w tej drodze, to oznacza to zwolnienie z podatku osób najbliższych. Osoby te jednak od takiego nabycia własności rzeczy i praw majątkowych (szczegółowo opisanych) płacą opłatę wojskową (wynoszącą 1,5% majątku nabytego), która jest podatkiem. Z kolei od darowizn przekazywanych pracownikom przez pracodawców pobierana jest tzw. jednolita składka na obowiązkowe państwowe ubezpieczenie społeczne wynosząca 22%.

Konsekwencją opodatkowania na Ukrainie nabycia spadku i darowizny podatkiem dochodowym od osób fizycznych jest to, że zróżnicowana, dyskryminująca obywateli polskich (nierezydentów) 18-procentowa stawka podatku narusza zasadę równego traktowania z art. 25 ust. 1 Konwencji w sprawie unikania podwójnego opodatkowania i zapobiegania uchylaniu się od opodatkowania w zakresie podatku od dochodu i majątku zawartej 12 stycznia 1993 r. między Rzecząpospolitą Polską a Ukrainą.

Słowa kluczowe: opodatkowanie nabycia spadku i darowizny na Ukrainie, zasada równego traktowania w opodatkowaniu nabycia spadku i darowizny przez nierezydentów w Polsce i na Ukrainie, opłata wojskowa (podatek), jednolita składka na obowiązkowe państwowe ubezpieczenie społeczne na Ukrainie, zasada niedyskryminacji

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ADMINISTRATIVE AND LEGAL SUPERVISION OF THE VETERINARY INSPECTION OVER FOOD SAFETY IN POLAND – SELECTED ISSUES

Introduction

The aim of Administrative supervision on the agri-food and food market which is the subject of this study is protecting consumers. It is directly related to consumers' right to health and safety protection[1]. There is no doubt that ensuring the security of citizens is the duty of the state and it is a constant pursuit of achieving its highest possible level. It is connected with many legal, organizational and functional problems. In order to protect certain goods, authorized state bodies take actions creating a system of specific legal and non-legal measures. Thus, security in legal language is both a condition subjected to legal protection and the highest value, next to life, health and the environment, which is constitutionally protected[2].

Safety is the subject of interest of many scientific disciplines which in their research deal with it on various levels of knowledge. The concept can be described as a certain positive state, which consists of a sense of certainty and lack of danger. While the second of these factors is objective and therefore it is possible to diagnose it, the first is understood as the mental state of a person dependant on his subjective characteristics. Discussed approach to the issue is appropriate for sciences such as philosophy, psychology or sociology[3]. However, for the considerations undertaken in this study, it is appropriate to discuss security in the basis of the legal sciences. It would be in vain though to look for a definition

[1] I. Ozimek, *Ochrona konsumenta na rynku żywności*, Warszawa 2008, p. 24.

[2] E. Ura, *Nadzór Prezesa Urzędu Ochrony Konkurencji i Konsumentów nad ogólnym bezpieczeństwem produktów*, „Zeszyty Naukowe WSIZiA w Warszawie" 2017, No. 2(39), p. 137.

[3] S. Pieprzny, *Administracja bezpieczeństwa i porządku publicznego*, Rzeszów 2014, p. 9.

of security in normative acts, although it should be admitted that the legislator uses the term quite often. It is so called an indefinite term whose essence can be found mainly in doctrine.

The concept usually does not occur alone, but is specified by an adjective or noun. As S. Pieprzny states: "Legal generic character of security is subjective, objective or subjective-objective"[4]. It means that security is associated with the subject or object of protection, and sometimes with both at the same time. However, in normative acts, it will appear in the context of limiting and eliminating existing or potential threats and sources of their emergence. In this sense, we can distinguish many types of security, such as, for example, internal, political, economic, labor, sanitary or food security, which is the subject of this study.

One of the authorities competent to supervise food safety is the Veterinary Inspection. It belongs to the group of entities which are called "services, inspections and guards". This is a special category of local government administration bodies in various ways included in the system of voivodeship and poviat combined administration (or uncombined, as in the case of poviat veterinary inspector), performing public tasks in the field of protection of public safety and order. These types of entities primarily perform a protective function, which implies the obligation to protect many different values desired individually, as well as to maintain (ensure) objectively desired states of affairs, phenomena and processes. Such bodies are called administrative police[5].

The article presents the activities of the Veterinary Inspection to protect food safety and selected executive forms that it uses for this purpose.

Legal basis for food safety

In the Polish legal system, food safety standards result directly from EU regulations. Among them, one of the most important is Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 (hereinafter Regulation 178/2002)[6]. The ordinance contains basic definitions, establishes general principles of food law and appoints a specialized body – the Food Safety Authority, which is to safeguard the maintenance of the appropriate level of safety in question. The Regulation applies to all stages of production, processing and distribution of food and feed. The issues of food hygiene and the organization of official controls are governed by four regulations of the European Parliament and of the Council of 29 April 2004:

[4] *Ibidem*, p. 12.

[5] J. Dobkowski, *Pozycja prawnoustrojowa służb, inspekcji i straży*, Lex/el.

[6] Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety OJ L 31 of 1 February 2002.

– Regulation (EC) No. 852/2004 on the hygiene of foodstuffs[7],
– Regulation (EC) No. 853/2004 laying down specific hygiene rules for food of animal origin[8],
– Regulation (EC) No. 854/2004 laying down specific provisions on the organization of official controls on products of animal origin intended for human consumption[9],
– Regulation (EC) No. 882/2004 on official controls carried out to check compliance with feed and food law as well as animal health and animal welfare rules[10].

In Polish national legislation, basic regulations regarding food safety issues are contained in the following legal acts:
– the Act of 25 August 2006 on food and nutrition safety (hereinafter referred to as A.f.n.s.) (pol. Ustawa z dnia 25 sierpnia 2006 r. o bezpieczeństwie żywności i żywienia),
– the Act of 16 December 2005 on products of animal origin (hereinafter referred to as A.p.a.o.) (pol. Ustawa z dnia 16 grudnia 2005 r. o produktach pochodzenia zwierzęcego)[11],
– the Act of 21 December 2000 on the commercial quality of agri-food products (pol. Ustawa z dnia 21 grudnia 2000 r. o jakości handlowej artykułów rolno-spożywczych)[12],

and in the acts determining the functioning of individual inspections responsible for conducting official controls, such as the Act of 15 December 2000 on Trade Inspection (pol. Ustawa z dnia 15 grudnia 2000 r. o Inspekcji Handlowej)[13], or the Act of 29 January 2004 on Veterinary Inspection (pol. Ustawa z dnia 29 stycznia 2004 r. o Inspekcji Weterynaryjnej)[14].

The most important of the above-mentioned legal acts in relation to the subject of this study is the Act on food and nutrition safety, which was created in order to implement Regulation No. 178/2002 of the European Parliament and of the Council of 28 January 2002. The Act defines food health requirements, requirements for

[7] Regulation (EC) No. 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs, OJ Office. EC L 139 of 30 April 2004, p. 1.

[8] Regulation (EC) No. 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin, OJ Office. EC L 139 of 30 April 2004, p. 55.

[9] Regulation (EC) No. 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific provisions on the organization of official controls on products of animal origin intended for human consumption, OJ Office. EC L 139 of 30 April 2004, p. 206.

[10] Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls carried out to check compliance with feed and food law and animal health and animal welfare rules, OJ Office. EC L 165 of 30 April 2004, p. 1.

[11] Dz.U. 2019, Item 824.

[12] Dz.U. 2019, Item 2178.

[13] Dz.U. 2019, Item 1668.

[14] Dz.U. 2019, Item 910.

compliance with the principles of food hygiene and materials and products intended to come into contact with food, the competence of organs and requirements for conducting official food inspections. In addition, the act in question also contains standards regarding the principles of sales, advertising and promotion of foodstuffs, nutrition requirements for children and adolescents under collective nutrition in kindergartens, other forms of pre-school education, schools, excluding adult schools, industry II level schools and post-secondary schools, as well as in educational system institutions referred to in Art. 2 points 3, 7 and 8 of the Act of 14 December 2016 – Educational Law (pol. Ustawa z dnia 14 grudnia 2016 r. – Prawo oświatowe)[15]. In the light of the aforementioned Act, the organs of official food control are the bodies of the State Sanitary Inspection, Military Sanitary Inspection, Veterinary Inspection and Military Veterinary Inspection[16].

However, the above law does not regulate the safety of food products of animal origin. These regulations are contained in the Act on products of animal origin, which indicates the competence of the authorities in the field of hygiene and control of products of animal origin, as well as food containing both foodstuffs of non-animal origin and products of animal origin in agricultural retail trade. In addition, it specifies the requirements to be met by products of animal origin placed on the market, the requirements to be met in the production of products of animal origin and by these products, as well as the manner of carrying out official controls. The said Act also indicates the competence of the Veterinary Inspection authorities in the scope of official product controls, which is regulated by the discussed legal act and, less important from the point of view of the conducted considerations, supervision over compliance with the system of identification and registration of cattle and regarding the labeling of beef and beef products[17].

The concept of food safety

Defining food safety is the most important for further reasoning[18]. According to the legal definition, food safety is the general conditions that must be met, in particular regarding the additives and flavors used, levels of contaminants, pes-

[15] Dz.U. 2018 Item 996 as amended.

[16] Art. 73, Item 1 of A.f.n.s.

[17] Art. 1, Item 2 of A.p.a.o.

[18] In the light of Art. 2 of the Regulation 178/2002: "food" (or "foodstuff") means any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans. "Food" includes drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture, preparation or treatment. It includes water after the point of compliance as defined in Art. 6 of Directive 98/83/EC and without prejudice to the requirements of Directives 80/778/EEC and 98/83/EC. The author does not elaborate on this issue because of the limited framework of this study.

ticide residues, food irradiation conditions, organoleptic characteristics and activities that must be taken at all stages of production or trade in food to ensure human health and life[19]. In this approach, we take into consideration *food safety*, which is part of the broader concept of *food security*, present also in other sciences. It is realized in three dimensions: "1) physical availability of food, which means that the national food economy guarantees coverage of at least the minimum physiological demand, while imports provide food above that minimum demand; 2) the economic availability of food, which means that also the economically weakest households have access to necessary food (thanks to various forms of food aid); 3) the health suitability of a single food product (no impurities) and the food ration consumed (the necessary energy level and the correct proportion of nutrients)"[20]. However, food security in such a broad approach, as has already been mentioned, is of interest to other sciences. In legal science, the object of focus is to ensure sufficiently effective legal regulations and the system of organs controlling and supervising the food market to determine the correct health quality of food.

According to the statutory definition of food safety, any food that meets the requirements of law and for which all actions required by law have been taken can be considered safe. It should be added, however, that Art. 14, paragraph 8 of the Regulation No. 178/2002 allows the possibility for foodstuff to be considered dangerous if it gives ground for that, despite meeting the requirements of food law. The competent authorities may then take appropriate measures to impose to restrict placing on the market such a product or to withdraw it from the market. Thus, any presumption of exposure to the life or health of consumers, for example through the development of science or other circumstances, results in the actions of authorities to eliminate potential risk. As follows from the above, the food safety standard is the minimum standard that must be met by every food product on the market[21].

Official food control

This study uses the concept of administrative and legal supervision over food safety by referring to the features constituting this type of activity category and the names commonly used in the doctrine of administrative law. Meanwhile, in the legislation of the European Union, as well as under national law, in a slightly narrower scope, such activities operate under the name of official control. Therefore, it is necessary to discuss this term and present its essence.

[19] Art. 3, Item 3(5) of A.f.n.s.

[20] J. Małysz, *Ekonomiczna interpretacja bezpieczeństwa żywnościowego* [in:] *Bezpieczeństwo żywności w erze globalizacji*, ed. S. Kowalczyk, Warszawa 2009, p. 82.

[21] *Bezpieczeństwo żywności i żywienia. Komentarz*, ed. A. Szymecka-Wesołowska, Lex/el. 2013.

The legal definition of "official control" is set out in Regulation (EC) No. 882/2004. In accordance with Art. 2, point 1 is "any form of control that the competent authority or the European Community performs for the verification of compliance with feed and food law, animal health and animal welfare rules"[22]. It should be added, that the use of the term "official control" by the EU and Polish legislators requires several important comments. According to the ordinance, official control covers not only the entire food production and marketing process, but also feed and products intended to come into contact with food[23]. In addition, the definition suggests that the purpose of inspections is to check compliance with food law rules, while the EU legislature already indicates the executive measures that authorities may apply[24]. Therefore, according to the doctrine of administrative law, we are dealing not with control, but with supervision, the essence of which is the possibility of binding and authoritative interference in the activities of the supervised entity. To sum up, it should be stated that in EU law the concept of "official control" on the food market goes beyond both the functions performed beyond control and in the subject matter beyond food[25].

In Poland, the basic bodies established to supervise food safety are the State Sanitary Inspection reporting to the minister competent for health matters and Veterinary Inspection, which highest body – the Chief Veterinary Officer – reports to the minister competent for agriculture matters. In addition, tasks in this area are performed by the Military Sanitary Inspection, Military Veterinary Inspection and the State Sanitary Inspection of the Ministry of the Interior. However, under the phytosanitary requirements of plants, unprocessed or preprocessed plant materials, the State Inspectorate for Plant Protection and Seed Inspection is competent.

Veterinary Inspection

The basic tasks of the Veterinary Inspection (VI) include the protection of animal health, as well as the safety of animal products and food containing foodstuffs of non-animal origin and products of animal origin found in agricultural retail trade[26]. Agricultural retail trade is retail trade within the meaning of Art. 3, clause 7 of the Regulation No. 178/2002, and it covers the production of food originating in whole or in part from the own growing, breeding or rearing of the

[22] In the light of Art. 2(2) of the Regulation: "verification" means checking, by examination and the consideration of objective evidence, whether specified requirements have been fulfilled.

[23] This is confirmed by Art. 73 of A.f.n.s. and Art. 1 of the Act of 22 July 2006 on feed (Dz.U. 2019, Item 269).

[24] Art. 54 of the Regulation 882/2004.

[25] *Bezpieczeństwo żywności i żywienia. Komentarz*, ed. A. Szymecka-Wesołowska, Lex/el. 2013.

[26] Art. 3(1) of the Act of 29 January 2004 on Veterinary Inspection (Dz.U. 2018, Item 1557).

food business operator and selling such food to the final consumer[27] referred to in Art. 3, clause 18 of the Regulation No. 178/2002, or to establishments conducting retail trade for the final consumer. As it results from the above, VI focuses in its tasks on the protection of animal health, which directly and indirectly affects the maintenance of food safety requirements. Supervision on the specific type of food market, which is agricultural retail trade, is equally important. It should be emphasized that the supervision exercised by the said Inspection plays an important role in ensuring a high level of protection of human life and health, and also protects the economic interests of the consumer. These two goals are basic. Additional objectives are protection of the reliability of commercial transactions, ensuring the free movement of food in the European Union, protection of animal health and living conditions and protection of the environment. They are of particular importance for determining acceptable limits of competences that can be entrusted to public administration bodies, including the said Inspection[28].

The Act indicates the instruments with which VI performs its tasks, but it should be emphasized that this is not a closed range. It is worth to mention those that relate to food safety, they are:

- combating animal infectious diseases,
- combating animal diseases that can be transmitted to humans or from humans to animals,
- examination of slaughter animals and animal products,
- conducting official controls,
- supervising the placing on the market of animals and animal by-products,
- supervision of compliance with the provisions covering the area of operation,
- exchanging information as part of information exchange systems referred to in European Union legislation.

Carrying out its tasks, the Inspection cooperates with competent government administration bodies, territorial self-government units, organs of veterinary and veterinary self-government as well as customs authorities.

The legal act in question also defines the organization of the Veterinary Inspection. VI bodies are the Chief Veterinary Officer at its head, the voivodeship veterinarian as the head of the voivodeship veterinary inspection which is part of the combined government administration in the voivodeship, the poviat veterinarian, who is the superior of the poviat veterinary inspection being part of the

[27] In the light of that provision: "retail" means the handling and/or processing of food and its storage at the point of sale or delivery to the final consumer, and includes distribution terminals, catering operations, factory canteens, institutional catering, restaurants and other similar food service operations, shops, supermarket distribution centres and wholesale outlets. By contrast, "final consumer" means the ultimate consumer of a foodstuff who will not use the food as part of any food business operation or activity.

[28] P. Wojciechowski, *Model odpowiedzialności administracyjnej w prawie żywnościowym*, WK 2016, Lex/el.

non-integrated government administration and the border veterinary surgeon. The Chief Veterinary Officer is appointed and dismissed by the Prime Minister, and he performs his tasks with the assistance of the Chief Veterinary Inspectorate. The system of Inspection bodies is organized on the basis of hierarchical and service subordination.

An official veterinarian responsible for the border inspection has his own competence in the field of veterinary supervision and he performs his tasks with the help of a Border Veterinary Inspectorate and reports directly to the Chief Veterinarian.

Selected activities of the Veterinary Inspection to protect food safety

The Veterinary Inspection has many capabilities regarding the protection of animal health, and thus the protection of food safety. The framework of this study does not allow discussing all of them, therefore only actions to combat infectious animal diseases will be indicated as those which occur in situations of serious threat to food safety and are of a police nature.

Notifications about the possibility of an infectious disease of animals are received first by the poviat veterinary inspector. It is he who immediately takes the necessary steps to detect or rule out an infectious animal disease subject to compulsory control. He also has the obligation to immediately inform the voivodeship veterinarian about the possibility or occurrence of an infectious disease, as well as about his actions leading to the detection or exclusion of the disease. The voivodeship veterinarian forwards the information received to the Chief Veterinary Inspector.

As already mentioned above, the poviat veterinarian has been equipped with the possibility of using authoritative forms of action in the form of orders and prohibitions in order to avoid the threat of epizootic[29] safety. In such a situation, the overarching goal of using such measures is to protect public safety and health, including food safety.

For example, to combat infectious diseases, the poviat veterinarian may in the form of an administrative decision with immediate enforceability:

- order the isolation, guarding or observation of sick or infected animals or animals suspected of being infected or ill,
- designate a specific place as an outbreak,
- prohibit the issuing of health certificates, commercial or transport documents,
- order the killing or slaughter of sick or infected animals, suspected of being infected or of disease, or animals of species susceptible to the contagious disease in question,

[29] Epizootic – (of a disease) appearing in a large number of animals in the same place at the same time [in:] Cambridge English Dictionary, https://dictionary.cambridge.org/dictionary/english/ (10.06.2020).

- order cleaning and decontamination of places and means of transport, as well as decontamination, destruction or removal in a way that precludes the risk of spreading an infectious disease of animal feed, litter, natural fertilizers within the meaning of the provisions on fertilizers and fertilization, as well as items in contact with sick, infected animals or animals suspected of being infected or ill,
- prohibit persons who have been or may have been in contact with animals that are sick, infected or suspected of being infected or have a disease, to temporarily leave the outbreak of the disease,
- order the decontamination of objects of persons who have had or may have had contact with sick, infected or suspected of infection or disease animals,
- prohibit the feeding of animals with certain feeds or watering from specific tanks and water intakes,
- prohibit the introduction, carrying out and removal of animals or the importation and exportation of products, animal corpses and feedingstuffs at outbreaks of disease,
- order clinical examination of animals with laboratory sampling, autopsy of animals with taking laboratory samples or specific animal procedures, including vaccinations,
- prohibit the use of animals for breeding,
- specify the treatment of diseased, infected or suspected of infection or disease animals, animal corpses, products and feeds infected or suspected of being infected,
- order entities carrying out activities in the field of processing and use of animal by-products to neutralize animal corpses in connection with the control of infectious diseases, products obtained from these animals and objects in contact with killed animals,
- order the farm holder to take specific measures to protect the farm against infiltration by the infectious agent,
- order the farm owner to take specific actions to enable the sanitary shooting of free-living (wild) animals or to prohibit actions preventing or hindering the making of that killing,
- order the entities involved in the slaughter of animals to carry out slaughter specifying its conditions,
- order entities dealing with the transport of animals or animal corpses to transport them to the indicated places,
- order entities operating in the production of products to process them and, if necessary, to use specific technology for this processing,
- order entities operating in the field of aquaculture production business to take steps to reduce or eliminate the pathogen,
- specify the application of measures other than those listed in points 1–16 resulting from the European Union provisions directly applicable in the system of

Polish law regarding the control of infectious animal diseases, ensuring epizootic safety, in particular preventing, reducing or eliminating threats to public health[30].

It should be noted that the above-mentioned actions of the poviat veterinarian in the form of orders, bans and restrictions may apply to animals, people, things and the place. Undoubtedly, all these measures serve to protect animal health, as well as indirectly food safety, and their use is most justified. However, two of them directly affect the type of security under discussion. The first is the prohibition of issuing health certificates, commercial or transport documents, which has the effect of not being able to sell or use animals on the agri-food market. The second one is an order issued to entities operating in the field of product production, leading to their processing and, if necessary, the use of specific technology for this processing.

It should also be mentioned that in the event of a threat of occurrence or occurrence of an infectious disease of animals subject to compulsory control, the poviat veterinarian has the option of issuing a regulation – an act of local law, in which he can introduce many bans and orders regarding the poviat area[31]. However, in a situation where the above threat occurs in an area exceeding one poviat, he immediately informs the competent voivodeship veterinarian. Then the voivode may introduce many extensive restrictions by an ordinance[32].

In addition, if the animal owner does not comply with orders, bans or restrictions issued against him, the poviat veterinary officer may order the removal of the deficiencies found within a specified period by means of a decision with immediate enforceability. In the event of failure to comply with the obligations arising from the decision, he has the option of issuing an order to kill or slaughter animals of certain species and may prohibit the keeping of animals of these species on the holding. Additionally, for animals killed, slaughtered or died due to infectious diseases, the holder is entitled to compensation from the state budget, however, when these activities are ordered by the poviat veterinary surgeon, such benefit is not due. This is a kind of sanction for failure to comply with the decision issued by the competent authority. It is also worth adding that when we deal with this type of situation, the poviat veterinarian may, if necessary, call for help the Police authorities, authorized to use direct coercive measures.

All powers of the VI authorities are based on the basic principles of food law, i.e. the principle of risk analysis, the precautionary principle and the princi-

[30] Art. 44 §1 of the Act of 11 March 2004 on the protection of animal health and combating infectious animal diseases (hereinafter referred to as A.p.a.h.c.i.a.d.), Dz.U. 2018, Item 1967 (pol. Ustawa z dnia 11 marca 2004 r. o ochronie zdrowia zwierząt oraz zwalczaniu chorób zakaźnych zwierząt).

[31] More in Art. 45 of A.p.a.h.c.i.a.d.

[32] Art. 46 of A.p.a.h.c.i.a.d.

ple of protection of consumer interests[33]. Pursuant to Regulation 178/2002 "risk analysis" means a process consisting of three related elements: risk assessment, risk management and risk communication[34]. Whereby "risk" means the danger of adverse health effects and the severity of such effects as a consequence of the threat[35]. The precautionary principle is expressed in Art. 7, according to which "In specific circumstances where, following an assessment of available information, the possibility of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure the high level of health protection chosen in the Community may be adopted". The literature indicates that this is a kind of rebuttal of the presumption of legal safety of a foodstuff that meets all food safety requirements. It is also pointed out that it could be called the principle of limited trust. It was created to protect the health of consumers in the event of regulations' failure to comply with the knowledge progress or in case of scientific uncertainty, especially in the field of toxicology[36].

Conclusion

It is the public authority's responsibility to ensure health safety of food on the market and its quality in the production, marketing, processing and packaging phase, and this requires an effective food quality control system. The state establishes the relevant food law, and also appoints sanitary supervision authorities acting on its behalf, i.e. official food control authorities, and enforces compliance with the provisions[37].

[33] Regulation in Art. 3 lists definitions of individual elements of the definition:

11. "risk assessment" means a scientifically supported process consisting of four stages: hazard identification, hazard characterization, exposure assessment and risk characterization,
12. "risk management" means a process, different from risk assessment, consisting of examining policy alternatives in consultation with interested parties, taking into account risk assessment and other legitimate factors, and, when appropriate, selecting appropriate prevention and control options,
13. "risk communication" means the interactive exchange of information and opinions during the risk analysis process on hazards and risks, risk factors and risk perceptions, between risk assessors, risk managers, consumers, feed and food businesses, the scientific community and other parties, with regards to the explanation of the conclusions of the risk assessment and the reasons for the risk management decisions.

[34] Art. 3(10).

[35] Art. 3(9).

[36] M. Taczanowski, *Prawo żywnościowe*, Warszawa 2017, pp. 66–67.

[37] J. Kijowski, W. Wysłouch, *Integracja systemu HACCP i systemu według normy PN-EN ISO serii 9000:2001* [in:] *Zarządzanie jakością i bezpieczeństwem żywności. Integracja i informatyzacja systemów*, eds. J. Kijowski, T. Sikora, Warszawa 2003, pp. 131–148.

It should be pointed out that food control is necessary for consumer protection, as well as for other links in the food chain: industry, food production or food trading, as for these one of the utmost objectives is to gain consumer confidence. Both at the level of EU and Polish law, there are many legal acts regarding consumer protection on the agri-food market. They contain the rules and conditions that are required during the production and sale of food regarding information that is provided to the consumer, e.g. commercial grade, but also introduce bodies that ensure compliance with these stringent regulations. One of such bodies is the Veterinary Inspection, which in order to protect the indicated values uses administrative and legal supervision over animal health, as well as the safety of products of animal origin and food containing foodstuffs of non-animal origin and products of animal origin found in agricultural retail trade. In order for mentioned activities to be effective, the bodies of the said Inspection were equipped with the possibility of using many police forms of authority. It should be added, however, that in their activities they should comply with the principles of food law, which additionally justify such activities. Still, one should not forget that in every rule of law, interference in the sphere of rights and freedoms must always be based on the principle of proportionality. The reference to this principle can be found in the cited EU regulations, where it was indicated in relation to the precautionary principle that: "Measures adopted on the basis of paragraph 1 shall be proportionate and no more restrictive of trade than is required to achieve the high level of health protection chosen in the Community, regard being had to technical and economic feasibility and other factors regarded as legitimate in the matter under consideration"[38]. Moreover, it should not be forgotten that this is one of the basic constitutional principles which should guide public authorities.

Bibliography

Bezpieczeństwo żywności i żywienia. Komentarz, ed. A. Szymecka-Wesołowska, Lex/el. 2013.

Cambridge English Dictionary, https://dictionary.cambridge.org/.

Kijowski J., Wysłouch W., *Integracja systemu HACCP i systemu według normy PN-EN ISO serii 9000:2001* [in:] *Zarządzanie jakością i bezpieczeństwem żywności. Integracja i informatyzacja systemów*, eds. J. Kijowski, T. Sikora, Warszawa 2003.

Małysz J., *Ekonomiczna interpretacja bezpieczeństwa żywnościowego* [in:] *Bezpieczeństwo żywności w erze globalizacji*, ed. S. Kowalczyk, Warszawa 2009.

Ozimek I., *Ochrona konsumenta na rynku żywności*, Warszawa 2008.

Pieprzny S., *Administracja bezpieczeństwa i porządku publicznego*, Rzeszów 2014.

Taczanowski M., *Prawo żywnościowe*, Warszawa 2017.

[38] Art. 7 §2 of the Regulation 178/2002.

Ura E., *Nadzór Prezesa Urzędu Ochrony Konkurencji i Konsumentów nad ogólnym bezpieczeństwem produktów*, „Zeszyty Naukowe WSIZiA w Warszawie" 2017, No. 2(39).
Wojciechowski P., *Model of administrative responsibility in food law*, WK 2016, Lex/el.

Summary

Legal sciences, raising food safety as the subject of research, focus mainly on striving to ensure sufficiently effective legal regulations and the system of bodies controlling and supervising the food market that determine the correct health quality of food. One such body is the Veterinary Inspection. And while it focuses in its tasks mainly on the protection of animal health, it directly and indirectly affects the maintenance of food health requirements. Supervision exercised by the said Inspection plays an important role in ensuring a high level of protection of human life and health, and also protects the economic interests of the consumer. These two goals are basic. Additional objectives are protection of the reliability of commercial transactions, ensuring the free movement of food in the European Union, protection of animal health and living conditions and protection of the environment. They are of particular importance for determining acceptable limits of competences that can be entrusted to public administration bodies, including the said Inspection.

The article presents the activities of the Veterinary Inspection to protect food safety and selected executive forms that it uses for this purpose. These types of entities are equipped with such forms of activity because they fulfill a protective function in the public administration system. However, this function implies the obligation to protect many different values desired individually, as well as maintain (ensure) objectively desired states of affairs, phenomena and processes.

Keywords: administration, supervision, food safety, veterinary inspection, consumer protection

ADMINISTRACYJNOPRAWNY NADZÓR INSPEKCJI WETERYNARYJNEJ NAD BEZPIECZEŃSTWEM ŻYWNOŚCI W POLSCE – ZAGADNIENIA WYBRANE

Streszczenie

Nauki prawne, podnosząc jako przedmiot badań bezpieczeństwo żywności, skupiają się głównie na dążeniu do zapewnienia odpowiednio skutecznych regulacji prawnych i systemu organów sprawujących kontrolę i nadzór nad rynkiem spożywczym, które determinują prawidłową jakość zdrowotną żywności. Jednym z takich organów jest Inspekcja Weterynaryjna. I o ile skupia się ona w swoich zadaniach głównie na ochronie zdrowia zwierząt, to jednak w sposób bezpośredni i pośredni wpływa na zachowanie wymagań bezpieczeństwa żywności. Sprawowany przez omawianą Inspekcję nadzór pełni istotną rolę w zapewnieniu wysokiego poziomu ochrony życia i zdrowia człowieka, a ponadto chroni interesy ekonomiczne konsumenta. Te dwa cele mają charakter podstawowy. Dodatkowymi celami są: ochrona rzetelności transakcji handlowych, zapewnienie swobodnego przepływu żywności w Unii Europejskiej, ochrona zdrowia i warunków życia zwierząt oraz ochrona środowiska. Mają one szczególne znaczenie dla wyznaczenia dopuszczalnych granic kompetencji, jakie mogą być powierzone organom administracji publicznej, w tym omawianej Inspekcji.

Artykuł przedstawia działania Inspekcji Weterynaryjnej mające na celu ochronę bezpieczeństwa żywności oraz stosowane przez nią wybrane formy władcze o charakterze policyjnym. Tego rodzaju podmioty są wyposażone w takie formy działania, ponieważ pełnią w systemie administracji publicznej przede wszystkim funkcję ochronną. Natomiast z tej funkcji wynika powinność ochrony wielu zróżnicowanych wartości pożądanych jednostkowo, jak i utrzymania (zapewnienia) obiektywnie pożądanych stanów rzeczy, zjawisk i procesów.

Słowa kluczowe: administracja, nadzór, bezpieczeństwo żywności, inspekcja weterynaryjna, ochrona konsumenta

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POLICE COOPERATION WITH THE ENFORCEMENT AUTHORITIES IN THE ENFORCEMENT PROCEEDINGS IN ADMINISTRATION

Introduction

On the basis of the science of administrative law and administration, praxeology or organization theory, nowadays, there is a view, that administrative entities should cooperate with each other while performing public tasks[1]. Yet, in the doctrine of administrative law of the 70s of the last century, it was suggested, that the obligation to cooperate between state entities can be considered a binding principle of law[2].

The cooperation of public administration entities as a principle of law, was reflected in the Polish Constitution of 1997[3] and its content was developed and specified in legislation[4]. It should be noted, that in the current meaning, the principle of cooperation, in the context of the cooperation between public administration authorities, was directly articulated in the Act of 14 June 1960, the Code of Administrative Procedure[5]. Therefore, it currently belongs to the general principles of the administrative procedure. Article 7b, which was introduced into the Code of Administrative

[1] E. Olejniczak-Szałowska, *Prawny obowiązek współdziałania Policji z innymi służbami w sferze ochrony bezpieczeństwa i porządku publicznego* [in:] *Policja. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019, p. 34.

[2] S. Biernat, *Działania wspólne w administracji państwowej*, Wrocław–Warszawa–Kraków–Gdańsk 1979, p. 78.

[3] The preamble of the Constitution of the Republic of Poland of 1997 directly refers to the cooperation: "we establish this Constitution of the Republic of Poland as the basic law for the State, based on respect for freedom and justice, cooperation between the public powers, social dialogue as well as on the principle of subsidiarity in the strengthening the powers of citizens and their communities".

[4] E. Olejniczak-Szałowska, *Prawny obowiązek*…, p. 35.

[5] Dz.U. 2020, Item 256 as amended, hereinafter referred to as: the CAP.

Procedure on 1 June 2017 states, that in the course of their proceedings, public administration bodies shall cooperate with each other to the extent necessary to clarify the factual and legal status of the case, while taking into account the public interest and the legitimate interest of citizens, as well as the efficiency of the proceedings, by means appropriate to the nature, circumstances and complexity of the case. Legal significance of Art. 7b of the Code of Administrative Procedure consists in the fact that it determines the order of cooperation between the authorities as a general rule, without formulating its manners. Therefore, the authorities should cooperate with each other whenever this cooperation contributes to faster resolution of the case and the manner of this cooperation must be appropriate to the situation[6].

The enforcement authorities are entities that enter in different legal relations with participants of the administrative enforcement during their proceedings. At the same time, they are the obligatory participants of the enforcement relationship[7]. The enforcement relationship occurs when an authorized body, that uses state coercion, initiates an administrative enforcement, which causes specific procedural and administrative effects[8]. The legal definition of the enforcement authority as the central form of the enforcement proceedings was explicitly indicated in the Act on Enforcement Proceedings in Administration[9]. In accordance with Art. 1a, point 7 of the AEPA the enforcement authority – shall mean the authority entitled to use, in whole or in part, specified measures necessary for the debtors to meet their pecuniary or non-pecuniary obligations and to secure them. From this definition, it should be derived after M. Szubiakowski, that it includes both the procedural element of the enforcement activities and their actual state. It means that it concerns both: the body which issues procedural acts and the body which carries out actual activities in the proceedings that serve the purpose of the enforcement[10]. By issuing procedural acts in the enforcement proceedings, the enforcement authority decides on the rights and obligations of entities, performs actual activities, and also controls the enforcement activities carried out by its employees[11].

The aim of the administrative enforcement proceedings is to compel the obligated entities to meet their obligations which are subject to the administrative enforcement. Hence, it should be stated that, as the enforcement authorities enter

[6] Judgement of Provincial Administrative Court in Poznań of 20 December 2017, IV SA/Po 902/17, Lex 2424499.

[7] R. Sawuła, *Organy egzekucyjne w egzekucji administracyjnej* [in:] *System egzekucji administracyjnej*, eds. J. Niczyporuk, S. Fundowicz, J. Radwanowicz, Warszawa 2004, p. 172.

[8] R. Hausner, *Ochrona obywatela w postępowaniu egzekucyjnym w administracji*, Poznań 1988, p. 33.

[9] The Act of 17 June 1966 on Enforcement Proceedings in Administration (Dz.U. 2019 r., Item 1438 as amended), hereinafter referred to as: the AEPA.

[10] M. Szubiakowski [in:] *Postępowanie administracyjne – ogólne, podatkowe, i egzekucyjne*, eds. M. Szubiakowski, M. Wierzbowski, A. Wiktorowska, Warszawa 2002, p. 358.

[11] M. Ofiarska, *Postępowanie egzekucyjne w administracji*, Szczecin 2000, p. 31.

into different legal relations with participants of the administrative enforcement, the AEPA confers on them specific legal instruments, including providing assistance or cooperation. These serve to achieve the aim of the proceedings. Among others, the enforcement authorities cooperate with the Police, so that the legal instruments they were given, would be effective.

As a specialized apparatus of authorities and public administration, the Police carry out the tasks, imposed on them by the legislator. The basic legal act regulating the activities of the Police is the Act of 6 April 1990 on the Police[12]. It regulates, among others, the police tasks, their functioning, officers' competences and their professional relationship. Additionally, in Art. 14, paragraphs 1–2 of the AP indicates the types of actions that can be undertaken by the Police. They include: preliminary investigation, criminal investigation and administration and order-keeping activities[13]. Apart from these, the legislator distinguishes a separate group of tasks, which include activities on instruction of the court, prosecutor, state administration and local government authorities. While carrying out ordered activities, the Police enable effective implementation of tasks falling within the competence of the above entities. This is due to their special capacity, vested powers and available measures. Therefore, activities on instruction of the court, prosecutor, state administration and local government authorities should be considered as a form of subsidiary activities, the scope of which results from separate acts. An example of such an Act is, among others, the AEPA.

Taking the above into consideration, it is worth focusing on the issue of the Police cooperation with the enforcement authorities in the administrative enforcement proceedings. Therefore, the aim of this article is to outline the essence of the concept of cooperation as a general principle of administrative law and to indicate legal instruments based on which the enforcement authorities can cooperate with the Police, so that the aim of their proceedings could be achieved. Moreover, the article refers to the procedure for using the legal instruments conferred to the enforcement authorities by the AEPA, i.e. providing assistance and cooperation. The behaviour of a police officer who was designated for assistance or cooperation was also described.

The concept of cooperation

From a semantic point of view, it should be stated, that the concept of cooperation means nothing other than acting with someone else, taking part in someone

[12] Dz.U. 2020, Item 360 as amended, hereinafter referred to as: the AP.

[13] For specific types of activities and actions of the police officers, related to them see e.g. Ł. Czebotar, commentary to Art. 14 [in:] *Ustawa o Policji. Komentarz*, Lex 2015, https://sip.lex.pl/#/commentary/587674230/471670 (26.05.2020).

else's activity, acting in concert, etc. Additionally, it is a multi-entity action that aims to achieve identical, unanimous, or at least coincident goals. At the same time, the activities of cooperating entities are somehow related to each other[14]. Generally speaking, the cooperation is identified with positive cooperation[15]. As observed by E. Olejniczak-Szałowska, the cooperation allows – i.e. enables or facilitates – the achievement of aims determined by law and the execution of public tasks that are beyond the capabilities (competences) of individual administrative entities[16]. The cooperation is also a notion which covers a range of activities of various nature, both authoritative and non-authoritative. Its aim is to prevent threats and remove them, if they occur[17]. The cooperation is the form of increasing the activity of performed tasks, which allows to optimize the use of forces and resources at the disposal of different bodies, while minimizing costs, reaching a broader audience or faster reacting to threats (violations)[18]. The concept of cooperation can also be understood as a set of activities regulated and defined by law, within which there exists a bond (of varying intensity) between the entities which undertake these activities[19]. The most common notion of cooperation, emphasises the lack of organizational subordination between the entities aiming at achieving a common goal, as its basic feature[20]. In general, the principle of cooperation is primarily intended to facilitate and improve the implementation of administrative tasks. The cooperation of several entities in specific activities and due to specific aims occurs only when each of them assists or is assisted by another entity from the same group. This principle arises from the will of the parties concerned and their needs. It is put into practice, while taking into account the principles of equality and voluntariness[21]. As emphasized by B. Jaworski, the cooperation as a special legal form of activity of the administrative police has

[14] E. Olejniczak-Szałowska, *Prawny obowiązek*…, p. 39.

[15] For more details, see: E. Ura, S. Pieprzny, *Rola porozumień administracyjnych w działalności organów bezpieczeństwa i porządku publicznego* [in:] *Podmioty administracji publicznej i prawne formy ich działania. Studia i materiały z Konferencji Naukowej poświęconej Jubileuszowi 80-tych urodzin Profesora Eugeniusza Ochendowskiego*, Toruń 2005, p. 433.

[16] E. Olejniczak-Szałowska, *Prawny obowiązek*…, p. 40.

[17] M. Kisała, *Charakter prawny powiązań organów administracji rządowej i samorządowej w sferze bezpieczeństwa i porządku publicznego jednostki samorządu terytorialnego* [in:] *Sprawność a legalność działania administracji publicznej w sferze ochrony porządku i bezpieczeństwa publicznego*, eds. P. Stanisz, M. Czuryk, K. Ostaszewski, J. Święcki, Lublin 2014, p. 367.

[18] M. Czuryk, *Zakres działania policji oraz obszary jej współdziałania z innymi podmiotami* [in:] *Prawo policyjne*, eds. M. Czuryk, M. Karpiuk, J. Kostrubiec, K. Orzeszyn, Warszawa 2014, p. 65.

[19] M. Małecka-Łyszczek, *Pojęcie współdziałania ze szczególnym uwzględnieniem współdziałania administracji publicznej z podmiotami ekonomii społecznej* [in:] *Wpływ przemian cywilizacyjnych na prawo administracyjne i administrację publiczną*, eds. J. Zimmermann, P.J. Suwaj, Warszawa 2013, p. 446.

[20] R. Michalska-Badziak, *Powiązania organizacyjne i funkcjonalne między podmiotami administrującymi* [in:] *Prawo administracyjne. Pojęcia instytucje, zasady w teorii i orzecznictwie*, ed. M. Stahl, Warszawa 2013, p. 290.

[21] E. Ura, *Prawo administracyjne*, Warszawa 2015, p. 104.

a diverse character, adapted to current needs and situations, and its scope is not limited[22]. The object of cooperation of authorities implementing tasks in the fields of public safety and order, is such use of legal institutions, organizational solutions and technical devices at their disposal, which ensures the most effective implementation of tasks in these fields[23].

Taking into consideration the doctrinal concept of cooperation, for the purposes of this article, the cooperation is understood as the interaction between the Police and the enforcement authorities in the enforcement proceedings in administration. Its purpose of is to facilitate the achievement of the objectives of these proceedings, i.e. to compel the obligated entities to meet their obligations which are subject to the administrative enforcement. The focus is on the possibility for the Police to provide the enforcement authorities and the debt collector with assistance and cooperation, to prevent and eliminate threats that may arise or arose, while carrying out the enforcement activities.

Police assistance or cooperation in the enforcement activities in the enforcement proceedings in administration.

The source of legal relations between the police and the enforcement authorities in the administrative enforcement proceedings is primarily the AEPA and the regulations issued by the Minister of Internal Affairs and Administration. Moreover, the necessary regulations, based on which the Police may cooperate with the enforcement authorities, are included in the Act on Police. As mentioned above, Art. 14, paragraph 2 imposes on the Police an obligation to perform activities on instruction of the court, prosecutor, state administration and local government authorities, which were specified in separate acts.

One of such acts is the AEPA, which in Art. 46 § 1 states that the enforcement authority and the debt collector may, if necessary, call (also orally) for assistance in urgent cases, if they encounter resistance that prevents or hinders the enforcement, or if there is a reasonable presumption that they could meet such resistance. That includes police assistance. As A. Romańska rightly points out, although in the context of assisting a bailiff in the civil enforcement proceedings, "resistance" means obstructing or preventing a bailiff (in the present case – the enforcement authority or the debt collector) from carrying out the enforcement activities. The form of resistance, i.e. passive or active, does not matter, as well as whether the resistance is put up by the debtor or by a third party[24]. These remarks remain valid also in the context of the administrative enforcement proceedings.

[22] B. Jaworski, *Policja administracyjna*, Toruń 2019, p. 135.

[23] E. Ura, S. Pieprzny, *Rola porozumień*…, p. 434.

[24] A. Romańska, *Asysta i pomoc komornikowi*, „Policja 997" 2015, No. 120/03, http://gazeta.policja.pl/997/informacje/110548,Asysta-i-pomoc-komornikowi-nr-120032015.html (30.05.2020).

In accordance with Art. 46 § 2 of the AEPA, the Police cannot refuse to assist the debt collector. However, before providing assistance, the policeman will request the enforcement authority or the debt collector to present an enforcement title on which the enforcement is being carried out[25].

In the context of the method of assistance to the enforcement authority and the debt collector, the AEPA refers to executory acts, by making in Art. 46 § 3 a statutory delegation for competent authorities, which specifies in detail, in a form of a regulation, the scope of duties of bodies providing assistance in carrying out the enforcement activities.

The competent authority for issuing regulations concerning the assistance of the Police is the Minister of Internal Affairs. Currently, the development of the legal norm indicated in Art. 46, § 3, point 2 of the AEPA, is the Regulation of the Minister of Internal Affairs and Administration of 16 April 2019 on the form in which the Police or the Border Guard assist the enforcement body and the debt collector in carrying out the enforcement activities[26].

The issue of the Police cooperation with the enforcement authority or the debt collector is regulated in Art. 50 § 3 of the AEPA. It states that the form of cooperation of the Police, the state protection service or the Border Guard, during the enforcement activities, is defined, in a form of regulation, by the Minister of Internal Affairs (point 2 of Art. 50, § 3 of the AEPA). It particularly considers the cases and places in which the cooperation is required, its nature, the procedure for notifying the competent authorities, the required documents, the method of documenting the performed activities and accounting their costs.

It means that, as in the case of providing assistance to the enforcement authority and the debt collector, the legislator also in the case of cooperation of the Police in carrying out the enforcement activities in the administrative enforcement proceedings, does not regulate these issues in the AEPA, but in the executive acts.

As for the differences between assistance and cooperation, it should be noted that assistance occurs in a situation when a police officer is obliged to accompany the enforcement authority or the debt collector and enables him to carry out the enforcement activities, while the cooperation is accompanying the enforcement authority or the debt collector while performing their enforcement activities within the buildings owned, among others, by the Police, to enable them to carry out these activities.

Therefore, given the functional and semantic interpretation of these terms, it should be stated that cooperation may be limited to the very presence of the Police authority during activities, and assistance may include the activity of the

[25] T. Jędrzejewski, P. Rączka, *Organy udzielające pomocy i organy asystujące w egzekucji administracyjnej*, [in:] *System egzekucji administracyjnej*, eds. J. Niczyporuk, S. Fundowicz, J. Radwanowicz, Warszawa 2004, p. 213.

[26] Dz.U. 2019, Item 806 as amended, hereinafter referred to as: the Regulation of 16 April 2019.

Police authorities, e.g. if there is a need to break the resistance of the debtor or to obviate threats to the order or security of the debt collector or third parties[27].

Providing assistance

The Police is the authority which provides assistance in the enforcement activities, for which the legislator does not introduce any qualifying criterion. This means that in the AEPA regulations there is a presumption of competence concerning assistance. It is connected with the fact that the Police will always provide assistance, unless a special provision excludes or limits that possibility only to a specific group of authorities[28].

The scope of the Regulation of 16 April 2019 on the forms of providing assistance by the Police to the enforcement authority or the debt collector includes:

- the form of providing and implementing assistance by the Police to the enforcement authority and the debt collector while carrying out the enforcement activities,
- the cases in which the assistance of the Police to the enforcement authority or the debt collector is required while carrying out the enforcement activities,

the procedure for the enforcement authority and the debt collector for asking for the police assistance in carrying out the enforcement activities,

- the method of documenting the activities performed by the police while their assistance in carrying out the enforcement actions and accounting for their costs.

Nevertheless, the Regulation of 16 April 2019 does not specify a legal definition of assistance, which justifies the attempt to define that notion. The Polish dictionary indicates that "help" can be, among others, action taken for the good of another person; something that helps in a difficult situation, makes it less onerous[29]. Taking into account the presented features, it can be stated, that the police assistance to the enforcement authority or the debt collector comprises of an action specified by the law, which is aimed at making a situation less onerous and more comfortable while performing the enforcement activities by the enforcement authority or the debt collector.

In accordance with § 2 part 1 of the Regulation of 16 April 2019 the enforcement authority or the debt collector ask, in writing, the police unit competent for the place of the enforcement for assistance in carrying out the enforcement activities, at least 7 days before their date. Paragraph 2, § 2 of the Regulation of 16 April 2019 indicates that in urgent cases, especially when a delay would threaten to prevent the enforcement, assistance in the enforcement activities can be requested orally by the enforcement authority or the debt collector.

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[27] *Ustawa o postępowaniu egzekucyjnym w administracji. Komentarz*, ed. R.D. Kijowski, Lex 2015 (30.05.2020).

[28] T. Jędrzejewski, P. Rączka, *Organy udzielające pomocy*…, p. 212.

[29] https://sjp.pwn.pl/slowniki/pomoc.html (30.05.2020).

It follows from the above, that the enforcement authority or the debt collector may call the Police for assistance in two ways. A written one – is used in cases when there is a reasonable presumption that the enforcement authority or the debt collector may encounter resistance from the debtor or third parties. In a written request for the police assistance, the enforcement authority or the debt collector indicate the place and time at which they intend to carry out the enforcement activities. They may also indicate the number of officers necessary to correctly carry out the activities[30]. The second way of calling the Police for assistance, the so-called an urgent case, is related to encountering resistance during the enforcement activities, especially if the delay would threaten to prevent the enforcement. As K. Pietrasik points out, urgent calls for assistance can occur in two cases. Firstly, when the enforcement authority or the debt collector cannot get to the place of the enforcement. It means that they may encounter a physical barrier in getting to the debtor's premises or real estate and it is necessary to overcome it. Secondly, when during the enforcement activities the enforcement authority or the debt collector encounter the resistance of the debtor or a third party. In both cases, the enforcement authority or the debt collector, call the nearest police unit for assistance by phone[31].

The local competent police unit provides assistance in carrying out the enforcement activities when it receives a written request, if in the course of performing these activities the enforcement authority or the debt collector encounter resistance that prevents or significantly hinders the enforcement activities or there is a reasonable presumption that they could meet such resistance (§ 3 of the Regulation of 16 April 2019). The presumption of resistance must be justified, and therefore it must be based on specific circumstances or information on the enforcement activity which must be carried out by the enforcement authority or the debt collector. The assessment of whether there is a reasonable presumption of encountering resistance belongs directly to the enforcement authority or the debt collector, not to the Police authorities or officers. They are also not entitled to examine whether the enforcement is justified and intentional[32].

The solution adopted in the Regulation of 16 April 2019 shows that the conditions for assistance by the appropriate organizational unit of the Police in carrying out the enforcement activities are:

- receipt of a written request and
- encountering resistance, with the reservation, that this resistance must prevent or significantly hinder the enforcement activities, or it can be inferred from the facts that the enforcement authority or the debt collector will encounter such resistance.

[30] K. Pietrasik, *Charakter prawny udziału Policji przy wykonywaniu czynności egzekucyjnych przez komornika sądowego*, „Studia Prawnicze i Administracyjne" 2014, No. 1, p. 63.

[31] *Ibidem*, p. 64.

[32] A. Romańska, *Asysta i pomoc*…

Cooperation

The legal basis for the Police cooperation during the enforcement activities carried out by the enforcement authority or the debt collector is Art. 50, § 3, point 2 of the AEPA. It indicates that the Minister of Internal Affairs, in a form of a regulation, defines the method of accompanying in the enforcement activities, particularly considering the cases and places in which the cooperation of the authorities is required, the form in which it is provided, the procedure for notifying the competent authorities, the required documents, the method of documenting the activities performed and accounting for their costs.

In accordance with the abovementioned statutory delegation the Minister of Internal Affairs and Administration issued on 26 April 2019 a Regulation on the cooperation of the Police, the state protection service or the Border Guard while performing the enforcement activities in the administrative enforcement proceedings carried out within buildings occupied by these services[33]. The scope of this Regulation is practically identical to the scope of the Regulation of the Minister of Internal Affairs and Administration of 16 April 2019. The only difference between them is that the scope of the Regulation of 16 April 2019 concerns the provision of assistance in performing the enforcement activities as such, regardless of where they are being carried out, while the scope of the cooperation is narrowed. This narrowing is due to the fact that, the Police cooperation to the enforcement authority or the debt collector in the enforcement activities, is provided within the buildings of the Police.

Notification about the enforcement activity which the enforcement authority or the debt collector intends to carry out, should be submitted to the police unit commander competent for the location of the buildings occupied by the Police, within which the enforcement activities are to be performed. The notification should be submitted in writing, at least 7 days before its date. It follows that the Police cooperation with the enforcement authority or the debt collector, compared to providing police assistance, differs in the way they inform the Police about the need to provide assistance or cooperation. In the first case, it is a call for assistance, while in the second one, it is a notification about the need to cooperate.

The Regulation of 26 April 2019 also includes a provision related to the urgent case of cooperation. It means that in urgent cases, especially when a delay would threaten to prevent the enforcement, the cooperation is provided on the basis of oral notification by the enforcement authority or the debt collector. This regulation is the same as the regulation contained in the Regulation of 16 April 2019. Therefore, all comments made for the urgent case of the police assistance to the enforcement authority or the debt collector remain identical in the context of the Police cooperation with them.

[33] Dz.U. 2019, Item 845 as amended, hereinafter referred to as: the Regulation of 26 April 2019.

In accordance with § 3 of the Regulation of 26 April 2019 the Police provide cooperation if the enforcement authority or the debt collector presents the enforcement title, on which the enforcement is being carried out. An enforcement title in the administrative enforcement proceedings is the basic legal institution of these proceedings, which defines its subjective and objective scope. Each enforcement title is related to a specific enforcement case, concerning the compulsory performance of a specific obligation or obligations, imposed on an individual entity. The administrative enforcement title is a confirmation of the competent authority that the basic act is enforceable and in a specific way entitles the enforcement authority to apply coercion to the debtor[34].

However, according to the Regulation of 26 April 2019 the enforcement title is not only the basis for carrying out the enforcement. The enforcement authority or the debt collector must be in a real, physical possession of the enforcement title in order to present it to the police authority who will cooperate with them. It means that it is a prerequisite for the effective police cooperation.

The conduct of a police officer when assigned to provide assistance or cooperation.

Assistance in carrying out the enforcement activities is provided by an assigned policeman (§ 4 of the Regulation of 16 April 2019). Therefore, some obligations are imposed on him. The police officer is obliged to ensure personal security to the enforcement authority, the debt collector and other participants in the proceedings by preventing the risk of losing one's life, health, as well as violation of bodily integrity. If there is a situation during which participants in the enforcement proceedings interfere with the enforcement activities, the police officer will orally tell them to behave, so that the enforcement activities could be performed (§ 5, points 1–2 of the Regulation of 16 April 2019). If the participants of the activities do not comply with the oral summons, the police officer takes actions against them, which are aimed at enabling the enforcement activities.

Due to the fact that the Regulation of 16 April 2019 does not indicate specific actions a police officer undertakes to enable the enforcement authority to carry out the enforcement activities as part of the assistance, it is necessary to make use of the provisions contained in the Act on the Police.

[34] P. Ostojski, *Zmiana tytułu wykonawczego w administracyjnym postępowaniu egzekucyjnym*, „Przegląd Podatkowy" 2019, No. 6, p. 48, https://sip.lex.pl/#/publication/151350515/ostojski-przemyslaw-zmiana-tytulu-wykonawczego-w-administracyjnym-postepowaniu-egzekucyjnym?cm=URELATIONS (30.05.2020).

Hence, while providing assistance or cooperation, the police officers can perform the activities provided for in Art. 15 of the AP[35], and also apply coercive measures specified in the Act of 24 May 2013 on coercive measures and firearms[36].

With regard to providing assistance the police officers most often exercise the right to identify people in order to ascertain their identity as well as the right to detain people who would in any way pose a direct threat to life, health or violation of the bodily integrity of the enforcement authority or the debt collector. It seems that in the majority of cases when the police officers provide assistance in carrying out the enforcement activities, they only identify the parties or participants in the enforcement proceedings, because the very presence of a police officer has a deterrent effect on the resisting individuals. Hence, it enables the enforcement authority or the debt collector to carry out the enforcement activities in the manner prescribed by the law[37].

While analysing Art. 15 of the AP, it should be noted that some of the powers of the police officers contained in it coincide with the powers of the enforcement authority or the debt collector enlisted in the AEPA[38]. As K. Pietrasik rightly points out, this convergence concerns only the form of entitlements and not the circumstances when they can be implemented[39]. As a result, it is the enforcement authority or the debt collector who is competent to carry out the enforcement activities related to the exercise of rights arising from the AEPA, not a police officer. The police officers are not entitled to perform the duties assigned by the AEPA to the enforcement authority or the debt collector. The duty of a policeman is to assist the enforcement authority or the debt collector in the course of their activities, and not to actually perform their activities. Such a situation would be outside of the scope of assistance in the enforcement activities. The role of a police officer in assisting the enforcement authority or the debt collector is not to perform technical activities, e.g. opening the debtor's means of transport, premises and other rooms and storages (Art. 47 § 1 of the AEPA). His role should focus

[35] Police officers shall have the right to, among others: identify people in order to ascertain their identity; detain people according to the procedure and in cases laid down statutorily; detain persons posing direct threat in real terms to human life or health, as well as to property; collect fingerprints and swabs from cheek mucous membrane of persons according to the procedure and in cases laid down statutorily; search persons and premises according to the procedure and in cases statutorily laid down; perform personal checks as well as search through baggage and inspect cargo in ports and stations, as well as in means of land, air and water transport; make preventive checks to protect against unlawful attacks on the lives or health of persons or property, or to protect against unauthorized activities that endanger life or health or safety and public order – for all the rights of police officers see Art. 15 of Act on the Police.

[36] Dz.U. 2019, Item 2418 as amended, hereinafter referred to as: the ACMF.

[37] K. Pietrasik, *Charakter prawny*…, p. 65.

[38] E.g. the Art. 47 and 48 of the AEPA concerning a search of a room or a person, respectively.

[39] K. Pietrasik, *Charakter prawny*…, p. 65.

primarily on preventing participants in the enforcement proceedings from undertaking activities aimed at disrupting, hindering or preventing the enforcement, as well as preventing the risk of losing life, health or violation of bodily integrity of the enforcement authority or the debt collector. A police officer may carry out activities provided for in Art. 15, paragraph 1, points 4 and 5 of the AP (searching persons and premises, performing a personal check, searching through baggage and inspect cargo in ports and stations, as well as in means of land, air and water transport), only in the mode and cases specified in the provisions of the Code of Criminal Procedure[40] and other acts.

If the resistance of the participants in the enforcement proceedings could not be broken by the mere presence of a police officer, he would be entitled to use direct coercive measures. Such a possibility has been reserved by the legislator only to the competences of the formations specified in the act, including the police officers (Art. 2(1) (9) of the ACMF).

Coercion is defined in the doctrine as a common phenomenon in social life. It consists in breaking one's will and imposing certain behaviours, by making a position of constraint, i.e. situations in which the will of the coerced one is violated, if he resists in the implementation of the will of the coercer[41].

It should be noted, that the means of direct coercion are used in a manner necessary to achieve the purpose of their use, in proportion to the degree of risk, by choosing a measure with the least possible discomfort (Art. 6(1) of the ACMF). Furthermore, direct coercive measures or firearms are used in the manner that causes the least possible damage. Their use should be waived when the purpose of their use has been achieved. Direct coercive measures are used with extreme caution, taking into account that they may pose a threat to the life or health of the authorized one or to another person. When deciding on the use of firearms, special care should be taken and their use should be considered as a last resort (Art. 7(1–4) of the ACMF) Policemen may only use direct coercive measures suitable to the situation and which are necessary to execute their commands, which, as S. Pieprzny rightly points out, delineates the limits of the authoritative action of the Police. This limit is the need which depends on the situation and the necessity to execute the commands, while the assessment of the situation, and, as a result, the choice of the measure, depends on the policeman[42].

As for the purpose of the use of direct coercive measures, according to Art. 11 of the ACMF, they can be used if at least one of the following actions must be taken: 1) enforcement of the legal behaviour in accordance with the order issued by the authorized person; 2) repelling a direct, unlawful attempt on the life, health

[40] Dz.U. 2020, Item 30 as amended.

[41] J. Niesiołowski, R. Paszkiewicz, *Zagadnienie przymusu w prawie*, „Państwo i Prawo" 1989, No. 10, pp. 58–60.

[42] S. Pieprzny, *Policja. Organizacja i funkcjonowanie*, Kraków 2003, p. 88.

or freedom of the authorized person or another person; 3) counteracting to activities which aim directly at the attempt on the life, health or freedom of the authorized person or another person; 4) counteracting to violation of public order or security; 5) counteracting to a direct attack on areas, facilities or equipment protected by the authorized person; 6) protection of the order or security in areas or facilities protected by the authorized person; 7) counteracting the attack on the inviolability of the state border, as defined in Art. 1 of the Act of 12 October 1990 on the protection of the state border[43]; 8) counteracting to destruction of property; 9) ensuring of safe escorting or submission; 10) capturing of a person, prevention of his escape or a pursuit of a person; 11) detaining a person, prevention of his escape or a pursuit of a person; 12) overcoming passive resistance; 13) overcoming active resistance; 14) counteracting activities aimed at self-harm.

From the array of direct coercive measures contained in Art. 12 of the ACMF[44] one can indicate those that are or can be used while providing police assistance to the enforcement authority or the debt collector during the enforcement activities. These include in particular: physical force, handcuffs, a straitjacket, a restraining belt, a retarding net, a protective helmet, a truncheon. Of course, it should be noted that these measures are the most typical and most commonly used by the police officers who provide assistance to the enforcement authority or the debt collector. However, due to the unpredictability of the situations and human behaviour, other statutory means of direct coercion can be used. The assessment of the need to use direct coercive measures, as well as their choice, belongs to the police officer who must choose them while taking into account the statutory methods and the purpose of their use.

The above statement reflects the principle of proportionality in the activities of the Police, as their activities should take it into account. This principle has an extremely important dimension, especially while using means of direct coercion and firearms[45]. While presenting general characterization of the principle of proportionality, it can be stated that it covers several demands concerning the behaviour of public administration towards the citizen. As indicated by J. Zimmer-

[43] Dz.U. 2019, Item 1776 as amended.

[44] Direct coercive measures are: 1) physical force in the form of: a) transport techniques, b) defence techniques, c) attack techniques, d) incapacitation techniques; 2) physical restraints: a) handcuffs, b) leg cuffs, c) combined handcuffs; 3) a straitjacket; 4) a restraining belt; 5) a restraining net; 6) a protective helmet; 7) a truncheon; 8) water incapacitation measures; 9) service dog; 10) service horse; 11) non-penetrating bullets; 12) chemical incapacitating measures in the form of: a) handheld incapacitation devices, b) incapacitation devices in rucksacks, c) tear gas grenades, d) other devices intended for incapacitation; 13) items intended to incapacitate persons by means of electricity; 14) security cell; 15) isolation chamber; 16) isolation room; 17) road spike barriers and other means for stopping and immobilizing motor vehicles; 18) business vehicles; 19) measures to break the door lock and other obstacles, including explosives; 20) deafening or dazzling pyrotechnics.

[45] S. Pieprzny, *Policja. Organizacja*…, p. 91.

mann, the point is for the state and public administration to interfere in the rights of citizens in a reasonable and rational manner and not to abuse their resources and competences, thereby harming the citizen. It is also important that the appropriate balance is maintained between the objectives of the administration and the stringency of the means used for these purposes. In this regard, if public administration bodies undertake any action, they should measure the aims and the inflicted problems, as well as the proportions between the protection of the common (public) good (interest) and the individual good (interest)[46]. The norms of substantive administrative law should be formulated in a way which gives the law enforcement authorities the choice of the least onerous measure of interference with the rights of the individual, since the principle of proportionality is a guarantee of protecting the individual against excessive interference of public administration in his rights[47].

The above mentioned remarks should be directly related to the activities of the Police, basically to the activities of the police officers who provide assistance to the enforcement authorities or the debt collector in their proceedings. Due to the fact that activities connected with the use of direct coercive measures, as the name implies, directly encroach on the rights of citizens, their use should take into account the demands expressed by the principle of proportionality, i.e. they should be chosen in such a way that they achieve the purpose of their use and at the same time they interfere with the rights of the individual to the least possible extent.

After the assistance to the enforcement authority or the debt collector, a police officer prepares an official note on the course of activities taken (§ 6, paragraph 1 of the Regulation of 16 April 2019). It should include: identification of the enforcement authority and the debt collector, description of the method of calling for assistance in carrying out the enforcement activities by indicating whether the assistance was provided by oral or written request, specifying place, date, time duration and type of the enforcement, description of the scope of the assistance. The officer submits the note to his direct superior.

While comparing the duties of the police officers during assistance or cooperation to the enforcement authorities, it should be emphasized that the police assistance in performing the enforcement activities consists in the fact that the local competent police unit provides: access to the place where the enforcement activities are to be carried out, order at the place of the administrative enforcement proceedings and personal security of the enforcement authority or the debt collector. Assistance occurs when a police officer accompanies the enforcement authority or the debt collector and enables him to carry out the enforcement activities. When providing assistance, the duties of a police of-

[46] J. Zimmermann, *Prawo administracyjne*, Warszawa 2016, p. 166.

[47] E. Ura, *Prawo administracyjne*…, p. 99.

ficer are mainly ensuring the personal security of the enforcement authority or the debt collector and of other participants in the enforcement proceedings, particularly by preventing the risk of losing their life, health or violation of bodily integrity. In the case of the cooperation, the scope of duties of a police officer is broader than while providing assistance. It seems logical considering § 4 of the Regulation of 26 April 2019. In addition to the obligation to provide personal security to the enforcement authority and the debt collector, it imposes on a police officer who provides cooperation, obligation to provide access to the place where the enforcement activities are to be carried out. What is more, a police officer also ensures order at the place of administrative the enforcement proceedings.

Conclusion

Cooperation of the Police with the enforcement authorities in the enforcement proceedings in administration, consisting in providing these authorities with assistance or cooperation during the enforcement activities, is a desirable phenomenon, and in some cases, is necessary to respond quickly, efficiently and effectively to changing external circumstances that may occur during the enforcement activities. This cooperation is necessary to achieve the aim of the administrative enforcement proceedings, which is the compulsory performance of obligations, that are subject to the administrative enforcement, by administrative entities.

The analysis of doctrinal findings and legal provisions made for the purposes of this article leads to the conclusion that there is no relationship of superiority and organizational subordination between the parties cooperating with each other. Therefore, it should be stated that the cooperation of the Police with the enforcement authorities in the administrative enforcement proceedings is external cooperation and it is functional. It means that this cooperation does not result from organizational links between the Police and the administrative enforcement proceedings.

It is also worth noting that the described cooperation is rather one-sided, i.e. there is an advantage of police activities for the enforcement authorities. This situation is understandable from a logical point of view, considering the wide range of competences and powers of the Police while providing assistance or cooperation, and particularly, the power of the officers to use direct coercive measures and firearms. The analysis of the regulations concerning the provision of assistance or cooperation to the enforcement authorities by the Police also shows that cooperation between the abovementioned entities consists in taking actual actions, whose final aim is to ensure the safety of the enforcement authorities or the debt collector during their activities.

Bibliography

Biernat S., *Działania wspólne w administracji państwowej*, Wrocław–Warszawa–Kraków–Gdańsk 1979.

Czebotar Ł., commentary to Art. 14 [in:] *Ustawa o Policji. Komentarz*, Lex 2015, https://sip.lex.pl/#/commentary/587674230/471670 (26.05.2020).

Czuryk M., *Zakres działania policji oraz obszary jej współdziałania z innymi podmiotami* [in:] *Prawo policyjne*, eds. M. Czuryk, M. Karpiuk, J. Kostrubiec, K. Orzeszyn, Warszawa 2014.

Hausner R., *Ochrona obywatela w postępowaniu egzekucyjnym w administracji*, Poznań 1988.

Jaworski B., *Policja administracyjna*, Toruń 2019.

Jędrzejewski T., Rączka P., *Organy udzielające pomocy i organy asystujące w egzekucji administracyjnej* [in:] *System egzekucji administracyjnej*, eds. J. Niczyporuk, S. Fundowicz, J. Radwanowicz, Warszawa 2004.

Kisała M., *Charakter prawny powiązań organów administracji rządowej i samorządowej w sferze bezpieczeństwa i porządku publicznego jednostki samorządu terytorialnego* [in:] *Sprawność a legalność działania administracji publicznej w sferze ochrony porządku i bezpieczeństwa publicznego*, eds. P. Stanisz, M. Czuryk, K. Ostaszewski, J. Święcki, Lublin 2014.

Małecka-Łyszczek M., *Pojęcie współdziałania ze szczególnym uwzględnieniem współdziałania administracji publicznej z podmiotami ekonomii społecznej* [in:] *Wpływ przemian cywilizacyjnych na prawo administracyjne i administrację publiczną*, eds. J. Zimmermann, P.J. Suwaj, Warszawa 2013.

Michalska-Badziak R., *Powiązania organizacyjne i funkcjonalne między podmiotami administrującymi* [in:] *Prawo administracyjne. Pojęcia instytucje, zasady w teorii i orzecznictwie*, ed. M. Stahl, Warszawa 2013.

Niesiołowski J., Paszkiewicz R., *Zagadnienie przymusu w prawie*, „Państwo i Prawo" 1989, No. 10.

Ofiarska M., *Postępowanie egzekucyjne w administracji*, Szczecin 2000.

Olejniczak-Szałowska E., *Prawny obowiązek współdziałania Policji z innymi służbami w sferze ochrony bezpieczeństwa i porządku publicznego* [in:] *Policja. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzy, Rzeszów 2019.

Ostojski P., *Zmiana tytułu wykonawczego w administracyjnym postępowaniu egzekucyjnym*, „Przegląd Podatkowy" 2019, No. 6, https://sip.lex.pl/#/publication/151350515/ostojski-przemyslaw-zmiana-tytulu-wykonawczego-w-administracyjnym-postepowaniu-egzekucyjnym?cm=URELATIONS (30.05.2020).

Pieprzny S., *Policja. Organizacja i funkcjonowanie*, Kraków 2003.

Pietrasik K., *Charakter prawny udziału Policji przy wykonywaniu czynności egzekucyjnych przez komornika sądowego*, „Studia Prawnicze i Administracyjne" 2014, No. 1.

Romańska A., *Asysta i pomoc komornikowi*, „Policja 997" 2015, No. 120/03, http://gazeta.policja.pl/997/informacje/110548,Asysta-i-pomoc-komornikowi-nr-120032015.html (30.05.2020).

Sawuła R., *Organy egzekucyjne w egzekucji administracyjnej* [in:] *System egzekucji administracyjnej*, eds. J. Niczyporuk, S. Fundowicz, J. Radwanowicz, Warszawa 2004.

Szubiakowski M. [in:] *Postępowanie administracyjne – ogólne, podatkowe, i egzekucyjne*, eds. M. Szubiakowski, M. Wierzbowski, A. Wiktorowska, Warszawa 2002.

Ura E., *Prawo administracyjne*, Warszawa 2015.

Ura E., Pieprzny S., *Rola porozumień administracyjnych w działalności organów bezpieczeństwa i porządku publicznego* [in:] *Podmioty administracji publicznej i prawne formy ich działania. Studia i materiały z Konferencji Naukowej poświęconej Jubileuszowi 80-tych urodzin Profesora Eugeniusza Ochendowskiego*, Toruń 2005.

Ustawa o postępowaniu egzekucyjnym w administracji. Komentarz, ed. R.D. Kijowski, Lex 2015 (30.05.2020).
Zimmermann J., *Prawo administracyjne*, Warszawa 2016.

Summary

On the basis of the science of administrative law and administration, praxeology or organization theory, nowadays, there is a view, that administrative entities should cooperate with each other while performing public tasks. The cooperation of public administration entities as a principle of law, was reflected in the Polish Constitution of 1997 and its content was developed and specified in legislation. The enforcement authorities are entities that enter in different legal relations with participants of the administrative enforcement during their proceedings. At the same time, they are the obligatory participants of the enforcement relationship. The aim of the administrative enforcement proceedings is to compel the obligated entities to meet their obligations which are subject to the administrative enforcement. As the enforcement authorities enter into different legal relations with participants of the administrative enforcement, specific legal instruments were conferred on them, including providing assistance or cooperation. These serve to achieve the aim of the proceedings. Among others, the enforcement authorities cooperate with the police, so that the legal instruments they were given, would be effective. The aim of this article is to outline the essence of the concept of cooperation as a general principle of administrative law and to indicate legal instruments on which the enforcement authorities can cooperate with the police, so that the aim of their proceedings could be achieved. Moreover, the article refers to the procedure for using the legal instruments conferred to the enforcement authorities, i.e. providing assistance and cooperation. It also describes the behaviour of a police officer while being designated for assistance or cooperation.

Keywords: cooperation, enforcement authorities, administrative enforcement proceedings, Police, help, assistance

WSPÓŁDZIAŁANIE POLICJI Z ORGANAMI EGZEKUCYJNYMI W POSTĘPOWANIU EGZEKUCYJNYM W ADMINISTRACJI

Streszczenie

Współcześnie na gruncie nauki prawa administracyjnego, prakseologii, teorii organizacji czy nauki administracji panuje pogląd, że podmioty administrujące w procesie wykonywania zadań publicznych powinny z sobą współdziałać. Współdziałanie podmiotów administracji publicznej jako zasada prawna swe odzwierciedlenie znalazła w Konstytucji RP z 1997 r., a jej treść rozwinięta i skonkretyzowana została w ustawodawstwie. Organy egzekucyjne to podmioty, które w ramach postępowania przymusowego wchodzą w rozmaite stosunki prawne z uczestnikami egzekucji administracyjnej i jednocześnie należą do obligatoryjnych uczestników stosunku egzekucyjnego. Celem postępowania egzekucyjnego w administracji jest przymusowe doprowadzenie do wykonania przez zobowiązane podmioty obowiązków podlegających egzekucji administracyjnej. Z racji tego, że organy egzekucyjne wchodzą w rozmaite stosunki prawne z uczestnikami egzekucji administracyjnej, przyznano tymże organom określone instrumenty prawne, do których należy udzielanie pomocy lub asysty. Udzielenie organom egzekucyjnym pomocy lub

asysty w trakcie konkretnego postępowania egzekucyjnego służy urzeczywistnieniu celu tegoż postępowania. Aby doszło do skutecznego i efektywnego wykorzystywania przyznanych instrumentów prawnych, organy egzekucyjne współdziałają m.in. z Policją. Celem niniejszego artykułu jest przybliżenie istoty pojęcia współdziałania jako ogólnej zasady prawa administracyjnego, wskazanie instrumentów prawnych, dzięki którym organy egzekucyjne mogą współdziałać z Policją, aby doszło do urzeczywistnienia celu administracyjnego postępowania egzekucyjnego. Ponadto w niniejszym artykule odniesiono się do trybu korzystania z przyznanych organom egzekucyjnym instrumentów prawnych, tj. udzielania pomocy i asysty, a także dokonano charakterystyki sposobu postępowania funkcjonariusza Policji w przypadku wyznaczenia do udzielenia pomocy lub asysty.

Słowa kluczowe: współdziałanie, organy egzekucyjne, postępowanie egzekucyjne w administracji, Policja, pomoc, asysta

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DISCRIMINATION IN RECRUITMENT AGAINST CZECH CITIZENS WITH HEARING IMPAIRMENT

Introduction

We are currently facing discriminatory behaviour on the part of employers, including potential ones. This happens for various reasons, most often due to age, gender and disability. As far as disability discrimination is concerned, a specific group are persons with hearing impairment.

Persons with hearing impairment

We understand hearing impairment as a reduced or missing ability to perceive auditory information. There are cases of hearing loss that can be recovered through medical treatment, but there are also cases where the hearing disability is permanent. The most important milestone in the development of a person with hearing impairment is the age at which hearing loss occurs. This moment can affect the "quality" of learning spoken speech.

There are different causes of hearing impairment; they can be divided into three groups:

– congenital cause – genetic or non-genetic congenital developmental defects,
– acquired by a hearing illness – inflammation, tumors, injuries, degenerative diseases,
– traumatic damage – trauma, toxic damage, noise damage.

The types of auditory disorders are also divided according to the time of occurrence of the disability, namely:

– prelingual deafness – congenital or acquired disorder before the person has learned the speech and language,

– postlingual deafness – loss of hearing after the person has learned the speech and language, after about 6 years of age.

Hearing impairment is related to difficulties in communication in spoken language – a person with hearing impairment has difficulty to understand spoken speech, has problems with speech production due to lack of auditory control, or his/her auditory control is insufficient. There are people with hearing impairment who are able to speak understandably thanks to their efforts and hard practice, but there are also people whose speech is very difficult to understand.

The existence of hearing impairment has its consequences; the severity of the hearing impairment is greatly influenced by the duration of hearing impairment. In short, the earlier the hearing impairment occurs, the worse the consequence is for the life of the person with hearing impairment. The life of a person with hearing impairment is affected the most by those defects that are innate or prelingually perceptive. The most serious consequence of hearing impairment for persons with prelingual hearing impairment is the barrier in communication and receiving information which limits their chance to understand the situation in an orally communicating society.

Communication with persons with hearing impairments

The communication with persons with hearing impairments occurs in several ways, especially in:

1. Lip-reading – the most common way of communication with a person with hearing impairment and a hearing person. This is an exhausting and demanding way of communication because only a few voices can be read from the lips, while the rest of them must be inferred.
2. Communication in the written form – it is necessary to remember that some persons with hearing impairment perceive the official language as a foreign language, especially the prelingual deaf persons have a different level of language knowledge (from the good level to the literacy level).
3. Sign language – it is a natural, full-fledged and independent language that has its own grammar and vocabulary (sign vocabulary). Sign language is the most appropriate way to communicate with persons with hearing impairment (deaf persons) because it is the way that is perceived visually (by eyes) and the hearing is not needed here.
4. Signed speech form – the official language supported by the signs. It is an artificially created system that has developed by hearing people communicate with deaf people. It is based on using signs and the grammar of the official language. Grammatical words, such as prepositions and clutches that are not used in the sign language, contain new signs. This form of communication

can be a useful lip-reading aid for hard-of-hearing and deaf persons. The basic precondition for using this form is a good knowledge of the language and the signs.

There are several forms of communication with persons with hearing impairment. However, it is important to remember that every person with hearing impairment has different preferences. It is always better to ask the person with hearing impairment about his/her preferences for the communication to avoid misunderstanding and to ensure the communication can be done in an adequate manner.

The Czech sign language is a language that is enshrined in the Act No. 155/1998 Coll., on the communication systems of deaf and deafblind persons, as amended. The goal of the Act is to emphasize the uniqueness of using sign language as the sole and distinctive language of deaf people. Under this Act, deaf and deafblind people have the right to freely choose one of the communication systems specified in the Act which is the best for their needs. Their choice must be respected in the maximum possible measure with the aim that persons with hearing impairment are able to participate equally and effectively in all areas of society. The same applies for the exercise of their legal rights.

Discrimination

Discrimination is a term derived from the Latin word *discriminare* and means "to distinguish". This is a special term that refers to any distinction between people and which we use in the negative sense of distinguishing people on the basis of their membership to a specific group (regardless of the abilities of a particular individual). Discrimination means any exclusion, restriction or disadvantage of an individual or a whole group of individuals on a discriminatory basis.

The Anti-Discrimination Act[1] contains a division into two types of discriminatory behaviour. The first type is so-called "direct discrimination". Direct discrimination is and act, including an omission, where one person is treated less favourably than another person is or would be treated in a comparable situation because of his/her race, ethnic origin, nationality, gender, sexual orientation, age, disability, religion, belief or worldview.

The second type is so-called "indirect discrimination", which means a behaviour where a seemingly neutral decision, distinction or procedure disadvantages or favours an individual over another person on the basis of discrimination deriving from discriminatory reasons. Indirect discrimination based on a disability also means a situation where one party refuses or forgets to take measures that are necessary for enabling the person with disability to have access to em-

[1] The Act No. 189/2009 Coll., on equal treatment and legal means of protection against discrimination and on the amendment of some laws (the Anti-Discrimination Act) as amended.

ployment or a job, a possibility of career advancement, to take advantage of work counselling, to participate in other vocational training or to use services that are intended for the general public.

Discrimination can be further divided into positive and negative discrimination. Positive discrimination is a type of discrimination where different treatment of a particular person or a group of persons is not applied directly against them and does not cause worsening of their position. These measures are taken for their benefit – their aim is to eliminate unjustified differences between the discriminated person(s) and the majority group. Negative discrimination means discrimination in the sense most societies see and understand it. A person or a group of persons are treated less favourably than others in the same situation on a discriminatory basis and also without any reasonable justification. This type of behaviour is not accepted by the society and the law is trying to regulate it.

Czech legislation

In the Czech legislation, there are several documents regulating the issue of discrimination and the protection of the rights of persons with disabilities. The most specific Czech legislation on the issue of employment of persons with disabilities is the Employment Act[2].

The Employment Act contains provisions on the employment of persons with disabilities. Specifically, it is the provisions of Sections 67–84 of the Employment Act. In accordance with the Employment Act, an increased protection in the labour market is provided to persons with disabilities.

The Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (the Convention) is an international human rights treaty of the United Nations intended to protect the rights and dignity of persons with disabilities. In the Czech Republic, it became effective in 2009.

The Convention deals with the legal treatment of the rights of persons with disabilities, including discrimination. The purpose of the Convention is to promote, ensure and guarantee the rights of persons with disabilities by the Member States of the Convention.

The Art. 27 of the Convention focuses on the issue of work and employment of persons with disabilities. In accordance with this article, persons with disabilities are entitled to work on an equal basis with others, namely:

[2] The Act No. 435/2004 Coll., on employment as amended (the Employment Act).

– the right to the opportunity to gain a living by work freely chosen or accepted in a labour market,
– the right to a working environment that is open, inclusive and accessible to persons with disabilities.

Member States have an obligation to ensure and promote the implementation of the right to work by taking appropriate steps, including through legislation, to inter alia:

– prohibit discrimination on the basis of disability,
– protect the rights of persons with disabilities to just and favourable work conditions (including equal opportunities and equal remuneration for work),
– ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others,
– enable persons with disabilities to have effective access to general technical and guidance programmes, placement services and vocational and continuing training,
– promote employment opportunities and career advancement for persons with disabilities in the labour market (including the assistance in finding, obtaining, maintaining and returning to employment),
– promote opportunities for self-employment,
– employ persons with disabilities in the public sector,
– promote the employment of persons with disabilities in the private sector through appropriate measures,
– ensure that reasonable accommodation is provided to persons with disabilities in the workplace,
– promote the acquisition by persons with disabilities of work experience in the open labour market,
– promote vocational and professional rehabilitation for persons with disabilities.

Discrimination against Czech Citizens with Hearing Impairment in Recruitment

In 2016, the author published a diploma thesis where she conducted research on the issue of discrimination against persons with hearing impairment. The research followed up on a qualitative survey in the form of a questionnaire in which the attitudes and experiences of persons with hearing impairment in the Czech Republic with discriminatory behaviour during their seeking for a job were identified. The results of the questionnaire revealed a high number of respondents who experienced discrimination during their seeking for a job.

The research aimed to prove whether there is a real problem. In the research, employers' reactions to applicants with hearing impairment were identified. For

better comparison, two fictional CVs were created, one of them represented a hearing job seeker and the other a deaf job seeker. The deaf job seeker's CV was inspired by the CV of the author's father who is also deaf. This CV contained the phrase that "the applicant is a person with hearing impairment who is able to communicate without barriers".

These two CVs were sent to 17 pre-selected advertisements (all were welding positions). The received responses were processed. Out of the total 17 responses, 12 companies responded to the hearing job seeker sending him an interview invitation, asking to provide missing information (telephone number etc.) or offering another welder's position. In five cases the companies did not respond at all. No company rejected his application.

Only three companies answered to the deaf job seeker. Other three companies have rejected him (in one case explaining that an audio examination is required for the welder position, even though it was not stated in their advertisement). From three companies, the deaf job seeker received an e-mail with a request to provide his phone number. There was an e-mail sent to them that he was a deaf candidate. Out of these three companies, two companies did not respond, and the third company sent a negative response explaining that the applicant was found to be inappropriate due to health restrictions. In eight cases, the deaf job seeker did not receive any answer (of which five companies were the same as in the case of the hearing job seeker).

Benefits of employing persons with hearing impairment

Employing and supporting the employment of persons with disabilities are one of the forms of state support for the return of persons with disabilities to normal social life.

Employing persons with hearing impairment (including persons with disabilities) has several advantages. First of all, there is a social benefit; it is better to employ a person with a disability than to have a person with a disability who is dependent on social benefits.

Helping persons with disabilities is certainly a moral necessity (duty) of other people. By employing persons with disabilities employers can help these people to maintain their mental balance and gain self-esteem, the feeling of social usefulness and expertise. By creating diversity in working teams it is possible to achieve overall stress reduction in the workplace, improve the social atmosphere and reduce the fluctuation of employees.

Employers can also gain a competitive advantage thanks to the fact that customers prefer to buy goods from manufacturers that are trying to behave considerately towards the society. The same applies to employees.

In addition to these benefits, employers in the Czech Republic have the opportunity to save money. In case of non-fulfilment of the condition of employing persons with disabilities (4% of the total number of employees – this condition applies to companies that employ more than 25 employees), the company is obliged to pay a specific amount to the state budget. This is not the only advantage, there are more benefits.

Conclusion

In conclusion, it is necessary to remember that persons with hearing impairment have numerous communication and information barriers due to their hearing impairment. Because of these barriers and different ways of communication (Czech sign language), they represent a disadvantaged group, and that is why they face obstacles on their way to find a good job in the labour market.

Persons with hearing impairment are rarely aware of their possibilities to defend themselves against possible discriminatory behaviour by potential employers. The main reason for this innocence is the fact that persons with prelingual hearing impairment are Czech sign language users, so the Czech language is a foreign language for them. Persons with hearing impairment have often problems with understanding written text in the Czech language, which implies even bigger difficulties with understanding the Czech legal text. This is a fact that does not only apply to the Czech Republic but also to all the states around the world, because problems with reading comprehension can happen to all deaf people around the world.

The absence of the Czech case law is one of the reasons why there is not a case law on this particular issue. It could be corrected by the state and the relevant institutions through appropriate translation of basic legislation into the Czech sign language and through disseminating of these information among persons with hearing impairments.

The aim of this work is to point out the issue of discrimination of persons with hearing impairment in their job seeking process, and bring into focus for others that, despite the existence of relevant legal regulations, there is a real problem with discriminatory behaviour against persons with hearing impairment from potential employers.

Bibliography

Bělina M. *et al*. *Pracovní právo*, Praha 2017.
Bělina M. *et al*. *Zákoník práce – komentář*, Praha 2015.
Galvas M. *et al. Pracovní právo*, Brno 2015.

Havlová J., *Diskriminace sluchově postižených občanů České republiky při přijímání do zaměstnání*, Brno 2016.
Horáková R., *Sluchové postižení: úvod do surdopedie*, Praha 2012.
Hrubý J., *Velký ilustrovaný průvodce neslyšících a nedoslýchavých po jejich vlastním osudu*, Praha 1998.
Hrubý J., *Velký ilustrovaný průvodce neslyšících a nedoslýchavých po jejich vlastním osudu*, Praha 1999.
Janeček P., *Úmluvy mezinárodních organizací a české pracovní právo*, Praha 2017.
Komendová J., *Pracovní podmínky osob se zdravotním postižením*, Ostrava 2009.
Kosinová B., *Neslyšící jako jazyková a kulturní menšina – kultura neslyšících*, Praha 2008.
Krahulcová B., *Komunikace sluchově postižených*, Praha 2002.
Kvasnicová J., Šamánek J. *et al.*, *Antidiskriminační zákon: komentář*, Praha 2015.
Loucaides L., The European Convention on Human Rights and the Rights of Persons with Disabilities [in:] *The European Convention on Human Rights: Collected Essays*, Leiden 2007.
Rovnost a diskriminace, eds. M. Bobek, P. Boučková, Z. Kühn, Praha 2007.
Supalla S., Bahan B., *Bird of a Different Feather and For a Decent Living Student Workbook*, Dawn Sign Press 1994.
UN General Assembly, *Convention on the Rights of Persons with Disabilities: Resolution*, A/RES/61/106, https://www.refworld.org/docid/45f973632.html (29.01.2019).
Wheatley M., Pabsch A., *Sign Language Legislation in the European Union. European Union of the Deaf (EUD)*, Brussels 2012.

Summary

This work deals with discrimination in recruitment against people with hearing impairment. The work defines basic concepts of the discrimination, hearing impairment and the Czech sign language including the basic legislation on this issue. In this context, research has been carried out in order to identify attitudes and experience of people with hearing impairment and the reactions of employers to a hearing-impaired job seeker.

Keywords: discrimination, recruitment, persons with hearing impairment

DYSKRYMINACJA W ZAKRESIE REKRUTACJI OBYWATELI CZESKICH Z UPOŚLEDZENIEM SŁUCHU

Streszczenie

Niniejsze opracowanie dotyczy dyskryminacji w zakresie rekrutacji osób z wadami słuchu. W artykule zdefiniowano podstawowe pojęcia dotyczące dyskryminacji, upośledzenia słuchu oraz czeskiego języka migowego, w tym podstawowe akty prawne w tym zakresie. W tym kontekście przeprowadzono badania mające na celu określenie postaw i doświadczeń osób z wadami słuchu oraz reakcji pracodawców na poszukującego pracy z wadą słuchu.

Słowa kluczowe: dyskryminacja, rekrutacja, osoby z wadami słuchu

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LEGAL ASPECTS OF THE POLICE COOPERATION WITH THE NATIONAL FOREST HOLDING

When considering the spheres of activity in which it is permissible to use non-governmental actions, attention should be paid to the sphere of cooperation of the Police with the State Forests National Forest Holding[1]. When analyzing the legal regulations of the Police cooperation with the State Forests, special attention should be paid to individual forms of cooperation manifested in conducting joint activities, exchange of information, in the implementation of official activities or joint training.

The term "cooperation" occurs in legal language. However, the lack of a general legal definition of cooperation means that its manifestations should be identified on the basis of the provisions of the constitutional administrative law and substantive administrative law[2].

The concept of cooperation in the administrative law literature has been known for a long time. "It is primarily associated with specialization determined by the development of civilization and the diversity of public life"[3]. T. Kuta considers cooperation as non-governmental activities of the administration and points out that this term is used to indicate the most common internal forms of those activities. He also states that usually general competence regulations are the legal basis for non-governmental activities[4]. Z. Cieślak explains cooperation as a bond

[1] State Forests National Forest Holding, hereinafter referred to as: the National Forests or the PGLLP.

[2] M. Kisała, *Aksjologia współdziałania administracji samorządowej z administracją rządową* [in:] *Aksjologia prawa administracyjnego*, Vol. I, ed. J. Zimmermann, Warszawa 2017, pp. 789–800.

[3] E. Ura, S. Pieprzny, *Rola porozumień administracyjnych w działalności organów bezpieczeństwa i porządku publicznego* [in:] *Podmioty administracji publicznej i prawne formy ich działania, Studia i materiały z Konferencji Naukowej Poświęconej Jubileuszowi 80-tych urodzin Profesora Eugeniusza Ochendowskiego*, Toruń 2005, p. 432; E. Ura, *Prawo administracyjne*, Warszawa 2015, p. 104.

[4] T. Kuta, *Pojęcie działań niewładczych w administracji na przykładzie administracji rolnictwa*, Wrocław 1963, p. 46.

connecting independent entities and meaning at least permission to jointly achieve the objectives set by law or cooperating entities, the effect of which shall be the joint implementation of specific objectives undertaken in accordance with the law, by conducting factual activities and entering into administrative agreements[5]. As M. Mączyński indicates, the forms of cooperation in the public administration can be very diverse[6]. Cooperation is a joint operation of at least two entities that seek to implement a joint undertaking through the involvement of units and resources[7], without the possibility of exerting any influence or imposing a specific position on the matter[8]. According to J. Zimmermann, the cooperation between public administration authorities is a kind of bond close to coordination[9] that can only occur in a decentralized system[10]. Cooperation is a natural consequence of the dispersion of tasks into various public administration entities, most often striving to achieve the assumed objective[11]. M. Ofiarska emphasizes that the concept of cooperation presupposes the voluntary existence and equivalent legal situation of entities that cooperate. There is no organizational superiority or subordination between the parties that cooperate. The most important feature of cooperation is a certain degree of independence of the given entity[12].

The main purpose of the Police cooperation with other entities is greater effectiveness of protection and security and public order, which is implemented by many public and non-public entities. Their cooperation, and often even permanent cooperation, are an important element in ensuring an adequate level of security and public order in the country[13]. Cooperation is also an intention to achieve

[5] Z. Cieślak, *Podstawowe instytucje prawa administracyjnego* [in:] Z. Cieślak, I. Lipowicz, Z. Niewiadomski, *Prawo administracyjne. Część ogólna*, Warszawa 2002, p. 101.

[6] M. Mączyński, *Koordynacja i współdziałanie w administracji (ze szczególnym uwzględnieniem szczebla powiatowego)* [in:] *Koordynacja działań lokalnych na rzecz bezpieczeństwa*, ed. J. Czapska, Kraków 2014, p. 46.

[7] J. Dobkowski, *Administracyjnoprawne stosunki łączące Policję z samorządem terytorialnym*, Olsztyn 2013, p. 243.

[8] K. Hermanowski, *Zasady współdziałania Centralnego Biura Śledczego Policji z innymi jednostkami organizacyjnymi Policji w zakresie bezpieczeństwa i porządku publicznego* [in:] *Współdziałanie służb mundurowych i etyka zawodowa funkcjonariuszy*, eds. B. Jaworski, M. Ura, Rzeszów 2016, p. 251.

[9] J. Zimmermann, *Prawo administracyjne*, Warszawa 2016, p. 231.

[10] The following points out the differences between "cooperation" and "coordination": M. Stahl, *Koordynacja i współdziałanie w gminie*, „Problemy Rad Narodowych. Studia i Materiały" 1980, No. 48, p. 79 n.

[11] B. Jaworski, *Relacje pomiędzy administracją rządową a samorządową – z uwzględnieniem relacji Policji z jednostkami samorządu terytorialnego* [in:] *Problemy współczesnej administracji publicznej w Polsce*, eds. E. Ura, S. Pieprzny, Rzeszów 2016, p. 20.

[12] M. Ofiarska, *Formy publicznoprawne współdziałania jednostek samorządu terytorialnego*, Warszawa 2008, p. 17.

[13] M. Pomykała, *Wybrane aspekty współdziałania przy zapewnieniu bezpieczeństwa imprez masowych* [in:] *Bezpieczeństwo imprez masowych*, eds. E. Ura, S. Pieprzny, Rzeszów 2012, p. 61.

the set objectives, through joint operation of relevant entities by means of specific methods[14]. Certain organizational units with joint or similar objectives can achieve greater effects when they interact with each other and provide mutual assistance than when each of those units would operate independently[15]. Therefore, the cooperation can only be mentioned when the joint objectives of many entities are defined[16]. As indicated by B. Jaworski, the purpose of the Police cooperation is also to synchronize public tasks by the entities of this administration. It is especially important in the event of overlapping tasks, or in the event of the need to consolidate cooperation of entities in order to improve and strengthen their activities performed[17].

The need for cooperation between public administration authorities in the implementation of their duties should not raise doubts regardless of whether there is an explicit legal regulation in this matter. It is necessary to mention the content of the preamble to the Polish Constitution[18] in which the cooperation of all types of authorities was indicated in the context of the values on which the law should be based[19]. Recently, the legislator has decided to give this value the rank of a general rule of administrative procedure[20].

Any action by a public law authority in a rule of law, in accordance with the principles of legalism and the rule of law, requires an appropriate legal basis[21]. Public administration operates on the basis and within the limits of the law. One of the grounds for the legitimacy of public administration activities in a specific form is the public interest indicating the objectives of the service for which public administration authorities were established and the values they are to serve to. The specification of public interest manifests itself in the content of legal norms referring explicitly or implicitly to this concept, as premises for undertaking specific actions. If the legislator does not rely on the requirements of public interest in a given legal act, the authority applying the law must decode the pro-

[14] K. Hermanowski, *Zasady współdziałania*…, p. 251.

[15] M. Mączyński, *Koordynacja i współdziałanie*…, p. 46.

[16] W. Brzozowski, *Współdziałanie władz publicznych*, „Państwo i Prawo" 2010, No. 2, p. 10.

[17] B. Jaworski, *Policja administracyjna*, Toruń 2019, p. 133.

[18] W. Piątek, A. Skoczylas, *Postępowanie egzekucyjne w administracji* [in:] *System Prawa Administracyjnego*, Vol. IX: *Prawo procesowe administracyjne*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2020, p. 594.

[19] Constitution of the Republic of Poland of 2 April 1997 (Dz.U. No. 78, Item. 483).

[20] Art. 7b of the Act of 14 June 1960 – Code of administrative procedure (Dz.U. 2019, No. 2020, Item 256), Art. 7b was added to the Code of administrative procedure on the basis of Art. 1 point 2 of the Code of administrative procedure. Within the framework of the same amendment, Art. 106a of the Code of administrative procedure regulating the so called "meeting in the mode of cooperation" was also added.

[21] K. Ziemski, *Przekazywanie zadań i kompetencji przez organy jednostek samorządu terytorialnego* [in:] *Aktualne problemy funkcjonowania samorządu terytorialnego*, eds. E. Ura, E. Feret, S. Pieprzny, Rzeszów–Sandomierz 2017, p. 60.

tected interests[22]. The cooperation may take the organizational form, which may also be legally expressed in functional forms, administrative agreements or "ordinary" civil contracts. M. Stahl states that "the authorization to cooperate within the public administration system may be of a general or specific nature, the convergence of objectives and tasks and general constitutional and legal basis are sufficient to establish cooperation. The substantive rules are also often the substantive law provisions"[23].

The institution of administrative agreements is used in the implementation of cooperation between administrative entities[24]. Assuming cooperation as one of the non-governmental forms of administration, it can be pointed out that the legal basis for taking actions may even be a general competence regulation, however, the best legal (non-governmental) form is the conclusion of administrative agreements[25]. The basic structural element of the administrative agreement is the cooperation of entities. This is a legal act conducted by entities performing public administration tasks[26].

An administrative agreement as a legal form of administration, appeared in the papers of J. Starościak and entered into the dictionary of administrative law permanently[27]. The administrative agreement, which is classified as non-governmental and public law[28], is a legal form of cooperation of hierarchically not subordinated[29] administrative authorities and institutions. The agreement should serve to enable mutual implementation of specific objectives of cooperation of independent entities[30]. The position of entities grouped in the cooperation system is equivalent[31]. Recognizing the freedom to cooperate, equality of parties, lack of subordination, E. Ura argues that the subject of an agreement concluded between entities on an

[22] M. Jaśkowska, *Pojęcie interesu publicznego i jego funkcje w prawie administracyjnym* [in:] *Teoria instytucji prawa administracyjnego. Księga pamiątkowa Profesora Jerzego Stefana Langroda*, ed. J. Niczyporuk, Paryż 2011, pp. 289–290.

[23] M. Stahl, *Zagadnienia ogólne* [in:] *System Prawa Administracyjnego*, Vol. VI: *Podmioty administrujące*, eds. R. Hauser, A. Wróbel, Z. Niewiadomski, Warszawa 2011, pp. 81–82.

[24] E. Stefańska, *Umowy zawierane w sferze administracji publicznej – wybrane zagadnienia* [in:] *Umowy w administracji*, ed. J. Boć, L. Dziewięcka-Bokun, Wrocław 2008, p. 155.

[25] E. Ura, *Prawne zagadnienia ochrony osób i mienia*, Rzeszów 1998, p. 125.

[26] E. Ura, *Prawo administracyjne*, p. 127.

[27] J. Starościak, *Studia z teorii prawa administracyjnego*, Warszawa 1967, pp. 71–89.

[28] K. Kłosowska-Lasek, *Prawne formy działania administracji publicznej* [in:] *Encyklopedia prawa administracyjnego*, eds. M. Domagała, A. Haładyj, S. Wrzosek, Warszawa 2010, p. 57.

[29] *Prawo administracyjne*, ed. Z. Niewiadomski, Warszawa 2011, p. 222.

[30] L. Bielecki, *Prawne formy i metody działania administracji* [in:] *Prawo administracyjne. Część ogólna, ustrojowe prawo administracyjne, wybrane zagadnienia materialnego prawa administracyjnego*, eds. M. Zdyb, J. Stelmasiak, Warszawa 2020, p. 225.

[31] P. Łazutka-Gawęda, *Zasada decentralizacji a współdziałanie publicznoprawne jednostek samorządu terytorialnego – wzajemne relacje* [in:] *Decentralizacja i centralizacja administracji publicznej. Współczesny wymiar w teorii i praktyce*, eds. B. Jaworska-Dębska, E. Olejniczak-Szałowska, R. Budzisz, Warszawa–Łódź 2019, p. 254.

equal and cooperative basis are always matters falling within the sphere of administrative law, not civil law, and that the agreement primarily serves the implementation of specific administrative tasks and only within the competence of the action of its participants[32]. The arrangement of relations between the entities concluding the cooperation agreement may serve to improve the performance of the administrative police function[33]. The administrative police shall be all those entities that perform police functions understood in a material sense. It points to activities aimed at protecting public safety and order or protecting against threats[34]. In this sense, the administrative police can also include services, inspections and rangers[35].

In the case of cooperation under an administrative agreement, a legal norm authorizing, or at least allowing for, the conclusion of such an agreement is necessary[36]. The legal effects of an administrative agreement vary depending on what type of agreement is concluded[37]. In implementing acts, it is sometimes *expressis verbis* provided for the possibility of further detailing the rules of cooperation by agreement. In the case of agreements concluded by the Police with the State Forests, provision was made for the obligation to jointly perform public tasks by entities concluding an administrative agreement in the strict sense. Such an obligation was formulated in the Forests Act[38], and then specified in the Regulation of the Minister of the Environment of 1 July 2014 on detailed rules of cooperation between the State Forests and the Police[39]. Those standards give cooperating authorities a great opportunity to define the subject and forms of cooperation without fear of violating the principle of legalism[40].

Pursuant to Art. 49, paragraph 3, point 1 of the Forests Act, the abovementioned Regulation was issued, which specified the manner in which the Police cooperated with the State Forests National Forest Holding. The cooperation under § 2 of the Regulation is undertaken by:

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[32] E. Ura, *Prawo administracyjne*, p. 128 n.

[33] B. Jaworski, *Policja administracyjna*, p. 145.

[34] See Z. Leoński, *Materialne prawo administracyjne*, Warszawa 2003, p. 188; S. Fundowicz, *Policja i prawo policyjne* [in:] *Nauka administracji wobec wyzwań współczesnego państwa prawa*, ed. J. Łukasiewicz, Rzeszów 2002, p. 179 n.; S. Pieprzny, E. Ura, *Formacje mundurowe w systemie administracji publicznej* [in:] *Służby i formacje mundurowe w systemie bezpieczeństwa wewnętrznego Rzeczypospolitej Polskiej*, Rzeszów 2010, p. 21.

[35] J. Dobkowski, *Pozycja prawnoustrojowa służb, inspekcji i straży*, Warszawa 2007, p. 153.

[36] M. Grążawski, *Porozumienie administracyjne jako prawna forma działania współczesnej administracji publicznej*, Bielsko-Biała 2007, p. 26.

[37] *Ibidem*, s. 38.

[38] The Forests Act of 28 September 1991 (Dz.U. 2020, Item. 6).

[39] Regulation of the Minister of Environment on detailed rules of cooperation between the State Forests and the Police of 1 July 2014 (Dz.U. 2014, Item 910) – the term "regulation" used further in the article means the regulation indicated in this provision.

[40] E. Ura, *Prawo administracyjne*, p. 105.

- the General Director of State Forests and Chief Inspector of the Forest Rangers with the Main Chief of Police,
- directors of regional directorates of the State Forests with Provincial Chiefs of Police and the Capital Chief of Police,
- chief forester with District (Municipal, Regional) Chiefs of Police and with Chiefs of Police Stations.

Forms of cooperation include providing assistance in conducting official activities, conducting joint activities and exchanging information[41]. E. Olejniczak-Szałowska, using the criterion of activity and method of implementing a joint action, proposes to distinguish the following forms of cooperation:
- conducting joint undertakings and activities,
- mutual assistance,
- exchange of information and unilateral sharing of information,
- organizing joint trainings[42].

As part of **conducting joint undertakings and activities** of the Police and State Forests within the cooperation, the legislator regulated: combating forest damage and combating crimes and offenses in this respect, in particular theft of wood and poaching, maintaining security and public order on land managed by the State Forests and protection of property managed by the State Forests. The cooperation of the State Forests with the Police in the scope specified in § 1 consists in providing assistance in conducting official activities, conducting joint activities and exchanging information.

The cooperation is primarily aimed at facilitating and improving the implementation of administrative tasks[43]. When analyzing the entities implementing the joint undertaking discussed in the article, it seems important to indicate the tasks for which the indicated entities were established. The Police tasks have been defined in Art. 1, paragraph 2 of the Act on the Police[44]. The basic tasks of the Police include:
- protection of human life and health and property against unlawful attacks affecting those goods,
- protection of public safety and order, including ensuring peace in public places and in means of public transport, in road traffic and in waters intended for general use,
- initiating and organizing activities aimed at preventing committing crimes and offenses as well as criminogenic phenomena and cooperating in this respect with state, local government and social organizations,

[41] W. Radecki, *Ochrona lasów przed zagrożeniami* [in:] *Polskie prawo leśne*, ed. A. Habuda, Warszawa 2016, p. 236.

[42] E. Olejniczak-Szałowska, *Prawny obowiązek współdziałania Policji z innymi służbami w sferze ochrony bezpieczeństwa i porządku publicznego* [in:] *Policja. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019, p. 40.

[43] E. Ura, *Prawo administracyjne*, p. 104.

[44] The Act on the Police of 6 April 1990 (Dz.U. 2020, Item 360).

- conducting counter-terrorism activities within the meaning of the Act of 10 June 2016 on anti-terrorist activities,
- detecting crimes and offenses and prosecuting their perpetrators,
- protecting facilities being the seat of members of the Council of Ministers, with the exception of facilities serving the Minister of National Defense and the Minister of Justice, indicated by the minister competent for internal affairs,
- supervision of specialist armed protective formations within the scope specified in separate regulations,
- monitoring compliance with order and administrative provisions related to public activities or in public places,
- cooperation with the Police of other countries and their international organizations, as well as with the authorities and institutions of the European Union under international agreements and arrangements as well as separate provisions,
- processing of criminal information, including personal data,
- maintaining data sets containing information collected by authorized authorities about fingerprints of persons, unidentified fingerprints from crime scenes and the results of deoxyribonucleic acid (DNA) analysis.

Well thought-out nature protection is a necessary activity on the one hand, and requiring some expenditure on the other hand. The nature protection usually loses in conflict situations caused by the desire and necessity to meet many social needs, with limited funding. It is important to show how important institution protecting nature in Poland the State Forests National Forest Holding is, which as part of its activities, supports nature protection in forests, in cooperation with the police units[45]. The Police also take action in forest areas. The state-owned forests are managed by the State Forests National Forest Holding, while supervision is exercised by the minister competent for the environment. The State Forests is managed by the Director General with the help of regional directors of the Directorate of State Forests. A Forest Service is created in the State Forests, which includes employees who deal with, among others combating crimes and offenses in the field of forest damage and nature protection as well as performing other tasks in the field of property protection. The indicated tasks are performed by forest rangers belonging to the Forest Service. The Forest Rangers are managed by the Forest Rangers Chief Inspector reporting to the Director General. According to Art. 48 of the Forest Act, the powers of forest rangers in the field of combating forest damage are vested in the chief forester, the deputy chief forester, and the surveillance engineer, forester and deputy forester. Article 47, paragraph 2 of the Act defines the tasks of forest rangers. They are authorized to:

- make identification of persons suspected of committing a crime or offense, as well as witnesses of a crime or offense, in order to establish their identity,

[45] K. Kannenberg, T. Leszczyński, E. Zysnarska, *Wybrane aspekty ochrony przyrody w polskich lasach*, Toruń 2016, p. 7.

- impose and collect criminal fines in matters and to the extent specified in separate provisions,
- stop and control means of transport in forest areas and in their immediate vicinity, in order to check the cargo and view the contents of luggage, in the event of a justified suspicion of committing a criminal offense,
- search rooms and other places in cases of reasonable suspicion of a crime, under the terms set out in the Code of Criminal Procedure,
- catch the perpetrator of a crime or offense red-handed or in pursuit taken immediately after committing the crime and bringing him/her to the Police,
- receive upon receipt items from crime or offense, as well as the tools and means used to commit them,
- conduct investigations and bring and support indictments if the subject of the crime is a tree or wood from forests owned by the State Treasury, in the manner and under the rules set out in the Code of Criminal Procedure,
- conduct proceedings in cases of misdemeanors and participate in hearings before the misdemeanour court as a public prosecutor and bringing appeals to the district courts against the misdemeanour court's decisions on combating offenses in the field of forest damage,
- carry long and short firearms, handcuffs, baton, hand-held thrower of incapacitating substances and objects intended to incapacitate persons by means of electricity,
- demand the necessary assistance from state institutions, apply for such assistance to business entities, social organizations, as well as in case of urgency to provide every citizen with *ad hoc* assistance, under the terms specified in the Act on the Police.

Forestry rangers are also authorized to inspect business entities dealing in the marketing and processing of wood and other forest products in order to check the legality of the origin of wood raw materials and other forest products (Art. 47, paragraph 2b).

Pursuant to § 5 of the aforementioned regulation, the Police and the State Forests (and within them primarily the Forest Rangers), conduct joint operations as part of the cooperation. They mainly include patrolling forest areas to ensure public safety and order in forests, along busy communication and tourist routes, in forest areas around cities and in tourist facilities, fire protection, nature and environmental protection, including forest floor protection, and protection of watercourses and water reservoirs, as well as organize and conduct, with the consent of the appropriate provincial chief of police or Capital City Chief of Police, activities in a given area based on

The concept of Art. 47 of the Forests Act is that forest rangers perform official duties only on land owned by the State Treasury managed by State Forests National Forest Holding[46]. Undertaking cooperation strengthens the possibility

[46] W. Radecki, *Ochrona lasów*…, p. 235.

of performing a public task that surpasses the potential of an individually perceived unit[47].

Mutual assistance to each other in the performance of official duties is regulated in § 4 of the Regulation and includes:

- assistance provided to the organizational units of the State Forests by the Police authorities in the areas of: searching rooms and other places as well as controlling means of transport in cases of justified suspicion of committing a crime and prosecuting persons suspected of committing a crime or offense in the forests, in particular persons suspected of poaching,
- assistance provided to the Police authorities by organizational units of the State Forests in the scope of: locating and identifying persons suspected of committing a crime or offense, sought by law enforcement authorities and staying in the forest or on the premises of the State Forests organizational units, securing traces of crimes or offenses committed in forests, sharing data from video monitoring in cases of reasonable suspicion of committing a crime or offense, providing the assistance of a guide who is an employee of the Forest Service in the event of the Police investigations in forest areas,
- providing means of transport as well as means of communication and signaling and alarm devices for the purposes of conducting joint activities of the State Forests and the Police.

The indicated forms of cooperation between the Police and the State Forests, regarding the provision of assistance in the performance of official activities and conducting joint operations, shall take place at the reasoned request of one of the parties.

According to Z. Leonski, the issue of cooperation can also be seen as a requirement for mutual provision of information by public administration authorities when other authorities are interested in the operation of one of the authorities. This rule could also be applied as sharing the necessary documents, which would be an extremely important element in favor of proper cooperation and effective performance of functions in public administration[48]. The simplest exchange of information serves-making joint choices in the broadly understood decision-making process[49]. A typical form of the Police cooperation with other services is the **exchange of information or unilateral provision of information**[50]. The exchange of information between the Police and the State Forests, regulated in § 7 of the Regulation, consists of:

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[47] M. Grążawski, M. Małecka-Łyszczek, *Związek jako forma współdziałania jednostek samorządu terytorialnego* [in:] *Jednostka, państwo, administracja – nowy wymiar*, ed. E. Ura, Rzeszów 2004, p. 188.

[48] Z. Leoński, *Nauka administracji*, Warszawa 2002, pp. 132–133.

[49] M. Sulczewski, *Informacja i współdziałanie*, Warszawa 1982, p. 91 n.

[50] E. Olejniczak-Szałowska, *Prawny obowiązek…*, p. 43.

- mutual provision of all information on the threat of crime and criminal circles related to forest damage and committed crimes and offenses in forests and organizational units of the State Forests, in particular in the field of theft of wood and poaching,
- mutual provision of materials regarding preventive actions in the field of forest protection against forest damage,
- participation of the Police representatives in the periodic meetings of the State Forests organizational units regarding the assessment of forest threat,
- submitting to the Main Chief of Police by the Chief Inspector of Forestry Rangers Annual Information on the protection of forests against forest damage and an annual report on conducted proceedings in cases of offenses,
- exchange of experience in the field of methods used to combat forest damage and disturbance of public peace and order, particularly in tourist facilities located in forests,
- exchange of information about regions (zones), dimensions and periods of fire hazard and threats related to various types of forest damage,
- providing police units of State Forests organizational units with information on persons suspected of committing a crime or offense in the field of forest damage,
- making available to the Police by organizational units of the State Forests detailed forest maps and providing information on the physiography of forest areas.

The last of the commonly used forms of cooperation is the **organization and conduct of training**. The Regulation in § 5, paragraph 3 obliges to conduct, as part of cooperation, joint trainings for employees of State Forests and the police officers, in particular on the rules of the use, storage and maintenance of firearms, rules for the use of direct coercion measures, combating forest damage, including poaching and theft in forests.

Most often during cooperation policemen and forest rangers control forest car parks, forest entry roads and check compliance with the prohibition on entering the forest. The aim of the activities is to ensure safety and order in forest areas. Areas of patrolled forests are increasingly covered by video monitoring, of which video material is evidence in ongoing proceedings. Through monitoring, they control whether illegal removal of garbage to the forest, violation of forest prohibitions, littering, poaching or theft of wood occur. Joint actions of foresters and uniformed services are not only to prevent the destruction of nature and disturbing animals, but also to improve the safety of people traveling on forest trails.

On the one hand, the cooperation of the Police with the State Forests prevents unlawful activities, because the mere presence of the police officers with forest rangers is a significant preventive factor, while on the other hand, it facilitates submitting the offender to legal liability[51].

[51] W. Radecki, *Ochrona lasów…*, p. 236.

The presented example of cooperation between the Police and State Forests confirms the use of this form of action in the implementation of public administration tasks. Greater effects can be achieved by both entities only if they cooperate with each other, conducting joint activities, providing mutual assistance in conducting official activities and exchanging information, than when each of those units would operate independently. The cooperation is aimed at facilitating and improving the implementation of assigned tasks and achieving joint objectives, which will lead to ensuring more effective protection of public safety and order in forest areas.

Bibliography

Bielecki L., *Prawne formy i metody działania administracji* [in:] *Prawo administracyjne. Część ogólna, ustrojowe prawo administracyjne, wybrane zagadnienia materialnego prawa administracyjnego*, eds. M. Zdyb, J. Stelmasiak, Warszawa 2020.

Brzozowski W., *Współdziałanie władz publicznych*, „Państwo i Prawo" 2010, No. 2.

Cieślak Z., *Podstawowe instytucje prawa administracyjnego* [in:] Z. Cieślak, I. Lipowicz, Z. Niewiadomski, *Prawo administracyjne. Część ogólna*, Warszawa 2002.

Dobkowski J., *Administracyjnoprawne stosunki łączące Policję z samorządem terytorialnym*, Olsztyn 2013.

Dobkowski J., *Pozycja prawnoustrojowa służb, inspekcji i straży*, Warszawa 2007.

Fundowicz S., *Policja i prawo policyjne* [in:] *Nauka administracji wobec wyzwań współczesnego państwa prawa*, ed. J. Łukasiewicz, Rzeszów 2002.

Grążawski M., Małecka-Łyszczek M., *Związek jako forma współdziałania jednostek samorządu terytorialnego* [in:] *Jednostka, państwo, administracja – nowy wymiar*, ed. E. Ura, Rzeszów 2004.

Grążawski M., *Porozumienie administracyjne jako prawna forma działania współczesnej administracji publicznej*, Bielsko-Biała 2007.

Hermanowski K., *Zasady współdziałania Centralnego Biura Śledczego Policji z innymi jednostkami organizacyjnymi Policji w zakresie bezpieczeństwa i porządku publicznego* [in:] *Współdziałanie służb mundurowych i etyka zawodowa funkcjonariuszy*, eds. B. Jaworski, M. Ura, Rzeszów 2016.

Jaśkowska M., *Pojęcie interesu publicznego i jego funkcje w prawie administracyjnym* [in:] *Teoria instytucji prawa administracyjnego. Księga pamiątkowa Profesora Jerzego Stefana Langroda*, ed. J. Niczyporuk, Paryż 2011.

Jaworski B., *Policja administracyjna*, Toruń 2019.

Jaworski B., *Relacje pomiędzy administracją rządową a samorządową – z uwzględnieniem relacji Policji z jednostkami samorządu terytorialnego* [in:] *Problemy współczesnej administracji publicznej w Polsce*, eds. E. Ura, S. Pieprzny, Rzeszów 2016.

Kannenberg K., Leszczyński T., Zysnarska E., *Wybrane aspekty ochrony przyrody w polskich lasach*, Toruń 2016.

Kisała M. *Aksjologia współdziałania administracji samorządowej z administracją rządową* [in:] *Aksjologia prawa administracyjnego*, Vol. I, ed. J. Zimmermann, Warszawa 2017.

Kłosowska-Lasek K., *Prawne formy działania administracji publicznej* [in:] *Encyklopedia prawa administracyjnego*, eds. M. Domagała, A. Haładyj, S. Wrzosek, Warszawa 2010.

Kuta T., *Pojęcie działań niewładczych w administracji na przykładzie administracji rolnictwa*, Wrocław 1963.

Leoński Z., *Materialne prawo administracyjne*, Warszawa 2003.
Leoński Z., *Nauka administracji*, Warszawa 2002.
Łazutka-Gawęda P., *Zasada decentralizacji a współdziałanie publicznoprawne jednostek samorządu terytorialnego – wzajemne relacje* [in:] *Decentralizacja i centralizacja administracji publicznej. Współczesny wymiar w teorii i praktyce*, eds. B. Jaworska-Dębska, E. Olejniczak-Szałowska, R. Budzisz, Warszawa–Łódź 2019.
Mączyński M., *Koordynacja i współdziałanie w administracji (ze szczególnym uwzględnieniem szczebla powiatowego)* [in:] *Koordynacja działań lokalnych na rzecz bezpieczeństwa*, ed. J. Czapska, Kraków 2014.
Ofiarska M., *Formy publicznoprawne współdziałania jednostek samorządu terytorialnego*, Warszawa 2008.
Olejniczak-Szałowska E., *Prawny obowiązek współdziałania Policji z innymi służbami w sferze ochrony bezpieczeństwa i porządku publicznego* [in:] *Policja. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019.
Piątek W., Skoczylas A., *Postępowanie egzekucyjne w administracji* [in:] *System Prawa Administracyjnego*, Vol. IX: *Prawo procesowe administracyjne*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2020.
Pieprzny S., Ura E., *Formacje mundurowe w systemie administracji publicznej* [in:] *Służby i formacje mundurowe w systemie bezpieczeństwa wewnętrznego Rzeczypospolitej Polskiej*, Rzeszów 2010.
Pomykała M., *Wybrane aspekty współdziałania przy zapewnieniu bezpieczeństwa imprez masowych* [in:] *Bezpieczeństwo imprez masowych*, eds. E. Ura, S. Pieprzny, Rzeszów 2012.
Prawo administracyjne, ed. Z. Niewiadomski, Warszawa 2011.
Radecki W., *Ochrona lasów przed zagrożeniami* [in:] *Polskie prawo leśne*, ed. A. Habuda, Warszawa 2016.
Stahl M., *Koordynacja i współdziałanie w gminie*, „Problemy Rad Narodowych. Studia i Materiały" 1980, No. 48.
Stahl M., *Zagadnienia ogólne* [in:] *System Prawa administracyjnego*, Vol. VI: *Podmioty administrujące*, eds. R. Hauser, A. Wróbel, Z. Niewiadomski, Warszawa 2011.
Starościak J., *Studia z teorii prawa administracyjnego*, Warszawa 1967.
Stefańska E., *Umowy zawierane w sferze administracji publicznej – wybrane zagadnienia* [in:] *Umowy w administracji*, eds. J. Boć, L. Dziewięcka-Bokun, Wrocław 2008.
Sulczewski M., *Informacja i współdziałanie*, Warszawa 1982.
Ura E., Pieprzny S., *Rola porozumień administracyjnych w działalności organów bezpieczeństwa i porządku publicznego* [in:] *Podmioty administracji publicznej i prawne formy ich działania, Studia i materiały z Konferencji Naukowej Poświęconej Jubileuszowi 80-tych urodzin Profesora Eugeniusza Ochendowskiego*, Toruń 2005.
Ura E., *Prawne zagadnienia ochrony osób i mienia*, Rzeszów 1998.
Ura E., *Prawo administracyjne*, Warszawa 2015.
Ziemski K., *Przekazywanie zadań i kompetencji przez organy jednostek samorządu terytorialnego* [in:] *Aktualne problemy funkcjonowania samorządu terytorialnego*, eds. E. Ura, E. Feret, S. Pieprzny, Rzeszów–Sandomierz 2017.
Zimmermann J., *Prawo administracyjne*, Warszawa 2016.

Summary

This article is devoted to the analysis of legal regulations constituting the basis for the Police cooperation with the State Forests National Forest Holding. The paper explains the concept of "cooperation" based on the doctrine of administrative law. The cooperation is aimed at facilitating and improv-

ing the implementation of assigned tasks and achieving joint objectives in ensuring safety and public order in forest areas. Greater effects can be achieved by both entities only if they cooperate with each other, conducting joint activities, providing mutual assistance in conducting official activities and exchanging information, than when each of those units would operate independently.

Keywords: Police, State Forests National Forest Holding, cooperation

PRAWNE ASPEKTY WSPÓŁDZIAŁANIA POLICJI Z PAŃSTWOWYM GOSPODARSTWEM LEŚNYM LASY PAŃSTWOWE

Streszczenie

Niniejszy artykuł poświęcono analizie regulacji prawnych stanowiących podstawy współdziałania Policji z Państwowym Gospodarstwem Leśnym Lasy Państwowe. W opracowaniu dokonano wyjaśnienia pojęcia „współdziałania" na podstawie doktryny prawa administracyjnego. Współdziałanie ma na celu ułatwienie i usprawnienie realizacji przyznanych zadań oraz osiąganie wspólnych celów w zapewnieniu bezpieczeństwa i porządku publicznego na terenach leśnych. Większe efekty są w stanie osiągnąć oba podmioty tylko wówczas, gdy będą ze sobą współdziałały, prowadząc wspólne działania, udzielając sobie wzajemnej pomocy w realizacji czynności służbowych oraz wymieniając informacje, niż wtedy, gdy każda z tych jednostek działałaby samodzielnie.

Słowa kluczowe: Policja, Państwowe Gospodarstwo Leśne Lasy Państwowe, współdziałanie

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THE PLACE AND ROLE OF THE POLICE IN UPBRINGING IN SOBRIETY AND COUNTERACTING ALCOHOLISM

1. In the previous achievements of the administrative law doctrine concerning addiction issues, including the alcohol addiction, the subjective aspect of this matter was related only to the local government[1]. However, there is a lack of studies concerning other entities which are competent to act in the scope of upbringing in sobriety and counteracting alcoholism. Therefore, to address the eponymous subject matter, it is required, at least briefly at this point, to look at the system of entities carrying out tasks in the scope of upbringing in sobriety and counteracting alcoholism.

2. The indication of the subjective scope of normatively defined activities for upbringing in sobriety and counteracting alcoholism requires to be noted that it is not only limited to public administration entities, but also to non-public ones[2].

In Art. 1 of the Act on upbringing in sobriety and counteracting alcoholism[3] the main pillars of entities carrying out tasks in the field of upbringing in sobriety

[1] Cf. np. R. Pruszkowski, *Obowiązki jednostek samorządu terytorialnego w zakresie przeciwdziałania alkoholizmowi*, „Finanse Komunalne" 2002, No. 2; R. Budzisz, B. Jaworska-Dębska, K. Wlaźlak, *Rola samorządu terytorialnego w zakresie wychowania w trzeźwości i przeciwdziałania alkoholizmowi (cz. I)*, „Studia Prawno-Ekonomiczne" 2009, Vol. LXXIX; *iidem*, *Rola samorządu terytorialnego w zakresie wychowania w trzeźwości i przeciwdziałania alkoholizmowi (cz. II)*, „Studia Prawno-Ekonomiczne" 2009, Vol. LXXX; B. Jaworska-Dębska, *Charakter i konstrukcja zadań samorządu terytorialnego w przedmiocie wychowania w trzeźwości i przeciwdziałania alkoholizmowi* [in:] *Charakter i konstrukcja zadań samorządu terytorialnego*, eds. M. Stec, S. Płażek, Warszawa 2017.

[2] P. Wilczyński, *Podmioty niepubliczne w sferze administracji publicznej*, „Państwo i Prawo" 2002, No. 2; M. Stahl, *Niepubliczne podmioty administrujące* [in:] *System Prawa Administracyjnego*, Vol. VI: *Podmioty administrujące*, Warszawa 2011. It is also essential to indicate that in the doctrine of the administrative law, within non-public entities, social organizations and private entities are distinguished (cf. J. Boć [in:] *Prawo administracyjne*, ed. J. Boć, Wrocław 2007, pp. 165–180), however, this distinction, owing to its inseparable nature, will not be discussed in this study.

[3] This is what the Act of 26 October 1982 on upbringing in sobriety and counteracting alcoholism is named (Dz.U. 2019, Item 2277 as amended).

and counteracting alcoholism are public administration bodies, established by the legislator. However, while taking into account the dualistic model of this administration existing since 1990 – the main pillars of the aforementioned entities are government administration bodies and local government units. In the doctrine, I. Skrzydło-Niżnik accurately spotlights the holistic, even systemic way of defining the aforementioned public entities. It means that the determination of their "positive" and currently available catalog should be made not only on the basis of provisions containing legal norms of single-minded, directional and task-related activities included in this Act, but also due to its legal norms contained in other specific Acts[4]. It is both a capacious and flexible formula at the same time, particularly useful in the political reality that has changed over the years and in the legal state that regulates it. Therefore, at present, other special Acts include, among others, the Act of 29 July 2015 on Counteracting Domestic Violence[5], the Act of 12 March 2004 on Social Welfare[6], or Act of 20 June 1997 on Traffic Law[7].

The bodies of all levels of the local government units, that is to say – municipalities, poviats and voivodeships, are primarily obliged to implement statutory tasks in the scope of upbringing in sobriety and counteracting alcoholism. Pursuant to the subsidiarity principle, the main burden of tasks in this subject is on the commune authorities, both on the legislative and control bodies, as well as on the executive ones. On the other hand, at the level above the municipal one, the main entities obliged to carry out tasks related to the upbringing in sobriety and counteracting alcoholism are not the poviat self-government bodies, whose role in this matter has been rather modestly defined, but the voivodeship self-government bodies, which include the performance of the statutory tasks in the form of the Voivodeship Preventive Program of Alcohol-Related Problems.

When it comes to the government segment of public administration responsible for upbringing in sobriety and counteracting alcoholism, specific tasks in this subject rest both with the central and local government administration bodies, mainly bodies with specific competence (State Agency of Solving Alcohol-Related Problems and defined in Art. 5, 6 and 7 of the Act on upbringing in sobriety and counteracting alcoholism of departmental ministers, to be more precise on the Minister of Education, Minister of Health, Minister of Science and Higher Education, Minister of National Heritage and Culture, Minister of Economy, and also on the grounds of the Border Patrol, State Fiscal Service and Police). The position of the Police in the subject on upbringing in sobriety and counteracting alcoholism will be closer introduced in the further part of the study.

[4] I. Skrzydło-Niżnik [in:] I. Skrzydło-Niżnik, G. Zalas, *Ustawa o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi. Komentarz. Doktryna. Orzecznictwo*, Kraków 2002, pp. 41–42.

[5] Dz.U. 2020, Item 218.

[6] Dz.U. 2019, Item 1507 as amended.

[7] Dz.U. 2020, Item 110 as amended.

In addition to the direct implementation of the tasks on upbringing in sobriety and counteracting alcoholism by public administration bodies, these entities are also obliged to indirectly participate in the implementation of the alcohol-related tasks, including acceptance of the creation and development of non-public entities, among others, social organizations, whose aim is to promote sobriety and abstinence, influencing people abusing alcohol and helping their families. Public administration support for these organizations takes various forms, from advisory and organizational activities to various forms of financial support. Thus, in the system of entities carrying out tasks in the field of upbringing in sobriety and counteracting alcoholism, there is also a presence of the broadly understood social organizations[8].

Among the non-public entities that carry out tasks in the field of education in sobriety and counteracting alcoholism, the Catholic Church and other religious associations should also be mentioned[9]. In the doctrine they are referred to as autonomous[10] entities with which public administration bodies cooperate in the field of upbringing in sobriety and counteracting alcoholism.

The Act on upbringing in sobriety and counteracting alcoholism also provides that the group of non-public entities undertaking activities related to solving alcohol-related problems also includes physical persons, whose activities in this field should be supported by municipalities. However, it must be clearly stated that while the activity of physical persons in the area regulated by administrative law is quite significant and related to the performance of public tasks or cooperation, such an activity does not take place in the field of broadly understood solving alcohol-related problems. There are relatively few health care units established by physical persons that provide health services addressed to people addicted to alcohol. Moreover, these existing establishments have a narrow range of health services, usually limited to interventions in the form of detoxification, which is a specific demand among people related to high functioning alcoholism (as an example: managers, cultural personalities). Physical persons do not undertake to,

[8] Of course, it should be remembered that nowadays apart from the term "social organizations" in the legal order and in the doctrine, there are used equivalent, but not identical expressions, among others, "non-governmental organizations", "organizations of the third sector", or "Public Benefit Institutions". Cf. closer: E. Smoktunowicz, *Prawo zrzeszania się w Polsce*, Warszawa 1992; J. Blicharz, *Udział polskich organizacji pozarządowych w wykonywaniu zadań administracji publicznej*, Wrocław 2005; A.M. Guziejewska, *Trzeci sektor – kilka wątpliwości terminologicznych*, „Przegląd Prawa Publicznego" 2007, No. 7.

[9] More on religious associations see: J. Szreniawski, *Związki wyznaniowe* [in:] *Prawo administracyjne ustrojowe. Podmioty administracji publicznej*, eds. J. Stelmasiak, J. Szreniawski, Bydgoszcz–Lublin 2002.

[10] S. Fundowicz, *Decentralizacja administracji publicznej w Polsce*, Lublin 2005, p. 57. First of all, however, the term "autonomy", used towards churches and other religious associations are defined in Art. 25 paragraph 3 of the Constitution of the Republic of Poland of 2 April 1997 (Dz.U. No. 78, Item 483 as amended).

among others, organize and run social welfare homes for people addicted to alcohol, which could, after all, provide benefits not only on a commercial basis, but also on a public law basis. The existing state of affairs is, on the one hand, undeniably an expression of the widespread underestimation of the seriousness of the alcohol-related problems. However, on the other hand, such a condition is the fact that there is still a relatively small group of people addicted to alcohol, whose financial status allows them to receive the financial benefits provided by the entities established and run by physical persons. Not without significance for such a condition is the system of denials characteristic of alcoholics, which make it difficult for them to accept their addiction, but also their reluctance to reveal this addiction out of fear of ostracism. The eventual ostracism on the part of the local government authorities may be the reason why, despite legal possibilities existing since 2013, there is no existence of social welfare homes for people addicted to alcohol[11].

In the summary of this section, it ought to be pointed out that a characteristic feature of most of the aforementioned public administration bodies is that alcohol-related problems are not their only worrisome issue or even the main sphere of their public activity. For them, such a subject matter is only one of many spheres of their activity. This undeniably applies to the bodies of local government units, which are considered as bodies of general authority. However, this can also be related to government administration bodies with special authority. For them, alcohol-related issues are only a part of their public activities. An exception in this respect is the State Agency for the Prevention of Alcohol-Related Problems, which is an administrative body whose subject-matter and functional jurisdiction is entirely exhausted in the alcohol-related issues.

3. In the light of the previous findings, there is no doubt that among all entities performing tasks in the field of upbringing in sobriety and counteracting alcoholism, in accordance with the principle of subsidiarity, the aforementioned tasks are primarily performed by the local's entities, that is to say where the source[12] of such problems can be found. On the other hand, if we take into account local government administration bodies, which acts within the aforemen-

[11] Since the separation of social welfare homes for people addicted to alcohol as a separate type of social welfare homes in 2013 (May 2020), only two such houses were created. One of them is a Social Welfare Home in Cracow, Rozrywka 1 Street, which purpose is according to statute § 3 (annex to Act No. LXVI/1652/17 Cracow City Hall from 15 March 2017, referring to the statute of a budgetary unit – Social Welfare Home in Cracow, Rozrywka 1 Street, Dziennik Urzędowy Województwa Małopolskiego 2017, Item 2046) providing people addicted to alcohol who require round-the-clock care of hospitality and care services, supporting at the level of applicable standard, in the scope of and forms resulting from individual needs and enabling the use of benefits under the universal health insurance, in the field of the aforementioned addiction therapy. However, the second one is only a subdivision for people addicted to alcohol Division II of Social Welfare Home in Pleszew.

[12] B. Jaworska-Dębska, *Charakter i konstrukcja*…, p. 187.

tioned sphere, one may be tempted to argue that among those public administration bodies of a special nature, for which activities in the alcoholic sphere are not the only matter, or even the main field of their activity, a special place is occupied by the Police as a uniformed service operating throughout the country, founded to maintain public order and safety. Such a position of the Police is undoubtedly owing to the fact that it operates on the basis of a general competence norm in the field of ensuring public safety and order[13]. Therefore, one of the most common factors which generate situations leading to violations of public safety and order are alcohol and its abuse. Moreover, the fact that the Police, as a uniformed service, have a possibility to use the coercive[14] force, is of great importance while considering its position in the alcoholic sphere.

3.1. When it comes to the place of the normative definition of the tasks of the Police in the alcohol sphere, then it has the disperse character. The aforementioned tasks are primarily and obviously defined in the Act[15] on the Police Law and in the Act on Upbringing in Sobriety and Counteracting Alcoholism, however, it should be noted that they are also defined in other specific Acts: Act on Counteracting Domestic Violence, Act on Social Welfare, or Act on Traffic Law.

3.2. It might seem that since this study concerns the place and role of the Police in upbringing in sobriety and counteracting alcoholism, then the subjective scope defined in such a manner is unambiguous and cannot be a source of doubts. Nevertheless, in order to mark the Police, on the basis of its regulations, there is a usage of the variety of terms, including "police officer", "officer of the Police", "Police Authority Supervising Law Compliance", "commanding officer of the police unit", or "police unit". Most often, this is undeniably a necessary form of internal clarification, but it is unfortunate that it is not always sufficient, especially when doubts arise at the stage of applying the law as to whether the same terms used in the provisions of the same Act are always used in the same meanings. For instance, pursuant to the Act on upbringing in sobriety and counteracting alcoholism, the term "police unit" is generally used to denote a certain organizational structure into which a person generating public intoxication is led or in which such a person is detained. Sometimes, however, the regulations of the aforementioned Act use the term "police unit" in a different sense, in order to denote the commander of this unit or a person authorized by him. The analysis of the nor-

[13] S. Pieprzny, *Ochrona bezpieczeństwa i porządku publicznego w prawie administracyjnym*, Rzeszów 2007, p. 9.

[14] I. Niżnik-Dobosz, *Władztwo organów Policji w multicentrycznym systemie źródeł prawa* [in:] *100-lecie Policji. Policja. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019. Simultaneously, it should be emphasized that in the doctrine of the administrative law the role and importance of non-executive activities of the Police is increasingly perceptible. Cf. J. Korczak, *Niewładcze formy działania Policji* [in:] *100-lecie Policji. Policja. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019.

[15] The Act on the Police of 6 April 1990 (Dz.U. 2020, Item 360 as amended).

mative material in terms of the method of defining the Police as an entity competent in matters of upbringing in sobriety and counteracting alcoholism is also proved by the regulations *expressis verbis* which do not define this entity. In such a case, the determination of the properties of the Police also requires interpretative efforts.

3.3. The indication of upbringing in sobriety and counteracting alcoholism as the examined field of the Police activity has only a directional value. It does not present a real picture of the activities of the Police in the sphere of alcohol addiction. The depiction of such an image requires an analysis of the normative material, in this matter contained in various legal Acts, which enable the identification of a variety of different spheres of the police activities.

3.3.1. The activity of the Police in the event of public intoxication is particularly visible, to be more precise it is almost the same visible as in the case of the public space[16]. Generally speaking, it is up to the Police officer (or the guard of the Municipal Guard) to eliminate such an occurrence by escorting intoxicated persons to the so-called sobering stations (in the absence of such a center or facility – to the police unit), to the healthcare entity or to the place of residence or stay of a person who, while being drunk, is the reason of scandal in a public place or workplace. It also refers to persons who are in circumstances that threaten their life or health, or that they pose a threat to life or health of others. The lack of a sobering center or facility in a given municipality or poviat means that a police officer escorts a drunk person from public places to the police unit in order to make them sober up.

3.3.2. The Police have a separate role in imposing an obligation on a person addicted to alcohol to undergo drug addiction treatment. First of all, the Police have signaling competences, for as the commander of the police unit is obliged to notify the competent municipal committee for solving alcohol-related problems of the cases justifying the initiation of the proceedings on the applicability of the obligation to undergo addiction treatment. In the course of these proceedings, in the event of unjustified failure to appear at the hearing or evasion of an order to submit to an examination by an expert or at a healthcare facility, the Police are responsible for conducting, ordered by the court, warrant for compulsory appearance to the healthcare institution of a person concerned. The police are also in charge of, ordered by the court, mandatory bringing in at the healthcare institution, if a person whose final decision of the court is to undergo alcohol treatment, does not offer himself voluntarily in a given center of addiction treatment, in order to undergo such a treatment. The same applies to a situation in which a person whose court order is to undergo alcohol treatment in a center of addiction treatment leaves such a center without a permission. Man-

[16] Cf. Closer: B. Jaworska-Dębska, *Policja a nietrzeźwość publiczna. Przeszłość, teraźniejszość, perspektywy* [in:] *100-lecie Policji. Organizacja i funkcjonowanie*, Rzeszów 2019.

datory bringing in includes the right to arrest the escorted person only in necessary cases and for the time necessary to perform the compulsory bringing in, ordered by the court. It is worth mentioning that, starting from 2018, the regulations for compulsory bringing in by the Police are statutory[17].

3.3.3. The addiction to alcohol or its excessive consumption is one of the reasons why an individual or family with such a problem remains in a difficult life situation and often require support of social assistance. The addiction to alcohol or its excessive consumption also means that an individual or family often remains "in the orbit" of the Police's interest, which therefore have closer knowledge about these people and their families. Moreover, Police may have information which is important for the head of the Social Welfare Center, the director of the Social Service Center or a social worker, in order to make a decision on the grant of ongoing benefit or amount of social assistance benefits. Its aim is to determine the amount of payment for social assistance benefits or for verification of the entitlement to social assistance benefits, the amount of these benefits or payment for these benefits. The police, along with other entities with relevant knowledge[18], are obliged to provide information pertinent to the decision taken. Since alcohol dependence or excessive consumption of alcohol often generates aggression, conducting a family community interview with these people and their families who use or apply for social assistance benefits in order to determine their personal or family income and financial situation, as well as providing social work for their benefit, may be a threat to the personal safety of the social worker. In such a case, the family environmental interview and the provision of social work in the community may be assisted by a Police officer. It should be emphasized that providing a social worker with the assistance of the Police in conducting a family community interview or providing social work in the environment is the responsibility of the locally competent Chief of Police.

3.3.4. Legal provisions play an important role when it comes to the Police towards the occurrence of domestic violence. However, the role of the Police in this matter requires two preliminary assumptions. Primarily, it should be emphasized at this point that, fortunately, it is a matter of the past to treat domestic violence as a private issue, concerning a family or a subject of matter that should be only dealt within the family circle, against which public administration bodies

[17] These provisions are included in Art. 33a of the Act on upbringing in sobriety and counteracting alcoholism, provided on the basis of the Act of 24 November 2017 on amending the Act on Mental Health Protection and some other Acts (Dz.U. Item 2439). Previously they were defined in the executive regulation issued on the basis of Art. 33, paragraph 2 on upbringing in sobriety and counteracting alcoholism.

[18] These are, among others, courts, Social Insurance Institution, Agricultural Social Insurance Fund and public administration bodies, and also probation officers, employers, entities performing medical activities, kindergartens, schools, facilities, clinics and centers, academies, non-governmental organizations.

(mainly the Police) are not appropriate[19]. The legislator's view of this occurrence has fundamentally changed. Domestic violence is not only a behavior (action or omission) that gives rise to criminal liability. Domestic violence has gained the status of a social phenomenon, more broadly regulated by administrative law, assigning specific tasks to public administration bodies, addressed both to people affected by violence and to perpetrators of this violence. Secondly, although nowadays domestic violence is rightly no longer equated with alcohol addiction or with other socially marginalizing phenomena, such as unemployment or poverty, after all, domestic violence also occurs in environments where such occurrences do not take place. Nevertheless, its practical aspect conclusively proves that domestic violence is very often associated with alcohol. This relationship is also noticed by the legislator. It is not without reason that the tasks of public administration concerning counteracting domestic violence constitute a component of social policy in the field of counteracting alcoholism[20]. In that event, the actions of the Police in relation to the aforementioned occurrence, defined as actions in the alcohol sector, will be the focus of this paper.

According to the definition, legal domestic violence is a one-time or repeated intentional act or omission that violates the rights or personal interests of relatives within the meaning of Art. 115, § 11 of the Criminal Code, as well as other people living together, in particular exposing these people to the danger of losing their life, health, violating their dignity, physical integrity, freedom (including the sexual one), causing damage to their physical or mental health, as well as causing emotional suffering and moral damages among people affected by violence[21]. Taking into account the method of determining the addressee of police activities in this matter, we can indicate individual activities addressed to a specific person (who uses domestic violence and the person affected by this violence), as well as general activities addressed to the environment at risk of domestic violence. When it comes to individual actions, first of all, it is necessary to emphasize the right of a police officer to detain a person who uses domestic violence, issue an order to immediately leave a shared flat and its immediate surroundings against that person, who poses a threat to life or health of the person affected by such a violence. Whereas, an example of general action in the field of counteracting domestic violence is, among others, integrating and coordinating the activities of various entities (social welfare organizational units; municipal commission for solving alcohol-related problems; including the Po-

[19] It seems that this state of affairs resulted from a kind of consent to the use of domestic violence, which was common in Poland in the 20th century, especially common among children, but also among women. The use of domestic violence in a family, which did not have particularly negative consequences in the form of murder or serious bodily harm, was treated as a reprehensible conduct, which however as a family issue should not be the subject of interest of public authorities.

[20] Art. 2, paragraph 1, point 7 of the Act on upbringing in sobriety and counteracting alcoholism.

[21] Art. 2 of the Act of 29 July 2005 on Counteracting Domestic Violence (Dz.U. 2020, Item 218).

lice; education; health care and non-governmental organizations) within the interdisciplinary team appointed by the executive body of the municipality, as well as distribution of information about institutions, people and possibilities of providing help in the local community.

3.3.5. Alcohol is a major threat to road safety. One of the essential conditions for maintaining this safety is the sobriety of road users, and in particular the sobriety of people driving a vehicle (primarily a motor vehicle, but also another type of vehicle). The doctrine indicates the indisputable fact that the condition of the vehicle driver is essential for the safety[22] on the road. Driving a motor vehicle in land, water or air traffic by a person who is not sober, that is in the state of inebriation or under the influence of alcohol, is prohibited. That intoxication of the person driving the vehicle, which is a state of inebriation or a state under the influence of alcohol[23] determines the qualification of a given act. The act of driving a motor vehicle under the influence of alcohol constitutes an offense included in Art. 178a of the Criminal Code[24]. On the other hand, an act of driving a motor vehicle after drinking alcohol constitutes an offense specified in Art. 87, § 1 of the Code of Petty Offenses[25]. It is also an offense for a person under the influence of alcohol or in the state of inebriation to conduct vehicle other than a motor on a public road, in a residential area or in a traffic zone[26]. The offense is also committed by the owner (also the holder, user or driver) who, on a public road, in a residential zone or in a traffic zone, allows a person who is under the influence of alcohol to drive the vehicle[27]. The Act on Traffic Law also lays down a general prohibition addressed to all road users and other people on or nearby the road driving a vehicle, leading a pedestrian column, riding horses or driving animals by an intoxicated person or a person under the influence of alcohol. Such a prohibition also applies to towing a vehicle driven by an intoxicated person after the use of alcohol. Indeed, supervision of safety and order on the roads belongs to the Police, whose activity in the field of counteracting alcoholism in road traffic is primarily of a checking and security nature. Pursuant to Art. 129, paragraph 2, point 3 of Traffic Law, police officer, as part of the broadly understood supervision over the safety and order of traffic on the roads, is entitled to demand that the vehicle driver or

[22] T. Bojarski [in:] *Kodeks wykroczeń. Komentarz*, ed. T. Bojarski, Warszawa 2015, p. 326.

[23] According to Art. 46, paragraph 2 on upbringing in sobriety and counteracting alcoholism, the post-alcohol condition occurs when the alcohol content in the body is equal to or leads to the blood-alcohol level ranging from 0,2‰ to 0,5‰ or its presence in the exhaled air from 0,1 mg to 0,25 mg in 1 dm^3.

[24] The Act of 6 June 1997 – The Criminal Code (Dz.U. 2019, Item 1959 as amended).

[25] The Act of 20 May 1971 – The Code of Petty Offenses (Dz.U. 2019, Item 821 as amended).

[26] Art. 87, § 1a and § 2 of the Code of Petty Offenses. Cf. Also f.e. M. Głuchowski, *Prowadzenie roweru po spożyciu alkoholu w prawie polskim i niemieckim*, „Prokuratura i Prawo" 2018, No. 4 and literature on the given subject.

[27] Art. 96, § 1, point 3 of the Code of Petty Offenses.

other person for which there is a reasonable suspicion that could drive a vehicle, should undergo a medical examination in order to determine the amount of alcohol in the body. On the other hand, protective measures taken by the police officer include, among others, preventing a person who is intoxicated or under the influence of alcohol from driving the vehicle.

3.4. Outlining the role of the Police in the alcoholic sphere requires, first of all, paying attention to its activities in the aforementioned sphere through the prism of the legal forms used in the implementation of these activities. There is no doubt that according to the principle of legality, also referred to as the rule of law included in Art. 7 of the Constitution of the Republic of Poland public authorities act on the basis and within the law. Moreover, the legal framework of administration, especially used in the external sphere, to be more precise directed to the addresses, remaining outside the organizational structure of the administration, must have a legal basis contained in the binding legislations. This fully applies to the activities of the Police in the analyzed subject, which are undertaken in the external sphere. The achievements of the doctrine of administrative law in the field of systematization of the forms of performing public tasks used by the administration are extremely rich. It includes various concepts for classifying legal forms of action. However, at this point, the criterion of sovereignty will be mainly used, which is the basis for distinguishing the imperial and non-executive actions of the Police undertaken in the alcoholic sphere. In the aforementioned field, the actions of the Police are dominated by imperial forms, that is those in the course of which the authority applying them may use the state authority enabling the compulsory fulfillment of its will[28]. Therefore, these are activities under which the Police unilaterally, owing to their powers, decide on the legal situation of an individual.

3.4.1. Administrative Acts should be mentioned among the sovereign forms of the police activity. For instance, on the basis of Art. 40^3 of the Act on upbringing in sobriety and counteracting alcoholism, the Chief of Police or a person entitled by him may take a decision on detaining someone, in the police unit, who generates public intoxication, on the basis of Art. 42^1 of the Act on upbringing in sobriety and counteracting alcoholism. The Chief of Police or a person entitled by him may take a decision on releasing the detained person from the police unit. However, on the basis of Art. 40^4 of the same Act, the Chief Officer of the police unit decides to release a minor brought to the Police unit in order to get sober, at the written request of the parents or guardians. The aforementioned Administrative Act is also issued by a Police officer pursuant to Art. 15a of the Act on the Police, addressed to a person using domestic violence, who poses

[28] The fact that most activities of the Police are carried out by means of imperative forms is discussed in the doctrine, among others, by S. Pieprzny, *Policja. Organizacja i funkcjonowanie*, Warszawa 2007, p. 82.

a threat for life or health of the person affected by this violence, an order to immediately leave the jointly occupied apartment and its immediate surroundings, or a ban on approaching the apartment and its immediate surroundings. Such an Act is immediately enforceable.

3.4.2. The actions of the Police in the alcoholic sphere take the form of material and technical imperious operations quite often. For instance, such forms are included in Art. 129, paragraph 2, point 3 of the Traffic Law, and consider the request of a police officer to demand the vehicle driver or other person, for which there is a reasonable suspicion that could drive a vehicle, to undergo a medical examination in order to determine the amount of alcohol in the body. It is also a material and technical activity of the police officer who is responsible for prevention from driving a vehicle of an intoxicated person or a person under the influence of alcohol (Art. 129, paragraph 2, point 8 of the Traffic Law). Such an activity is also contained in Art. 41 of the Act on upbringing in sobriety and counteracting alcoholism, and states about deposition of money or other items from a person detained in a Police unit, where she or he was brought in order to get sober. Undeniably, the material and technical activity is also the execution of mandatory bringing in of a person to a treatment institution by the Police ordered by the court pursuant to Art. 32, paragraph 3 of the Act on upbringing in sobriety and counteracting alcoholism. Such a situation takes place if the person who has been legally adjudicated by the court is obliged to undergo drug addiction treatment and does not voluntarily appear on a given day at the indicated drug addiction treatment facility in order to undergo this treatment or in the case of the obligation to undergo treatment in an inpatient drug rehabilitation facility, and the aforementioned person leaves such a center without a permission. The specificity of this activity is expressed in the fact that the Act (Art. 33, paragraph 1 and Art. 33a) indicates additional actions that the Police may undertake within its framework. It is primarily the right to detain the escorted person, the right to take away his or her items, the use of which could be the reason of self-harm or threaten life or health of another person, the right to apply direct coercion in the form of holding or immobilization of the escorted person (if he or she resists or is aggressive), the right to place the escorted person for the time of sobering up in a sober station, facility or police unit. The compulsory delivery indicated here is therefore a complex activity, the execution of which may also include other activities, specified by law.

3.4.3. Presenting, out of necessity at this point the legal forms of the Police activity in the alcoholic sphere, one should also indicate specific forms with hybrid features, because these are factual activities with legal effects preceded by an Administrative Act, which locate these forms on the verge of an Administrative Act and material-technical activities. Such forms of the Police activity include, among others, included in Art. 42 of the Act on upbringing in sobriety and counteracting alcoholism, the use of direct coercion against a person brought in to get sober and detained in a police unit, who poses a threat to his own or other person's life or

health, or destroys objects in the environment. The use of the discussed direct coercion involves two actions, primarily making decision in the subject of matter and subsequently concerning its execution. The Act clearly indicates that the decision to use direct coercion and to discontinue its use is made by the Chief of the police unit or a person authorized by him, and in their absence – by the officer on duty of the police unit. In an emergency, when it is not possible to obtain an immediate decision of the aforementioned persons on the use of direct coercion, the Act on Upbringing in Sobriety and Counteracting Alcoholism allows the same entity, to be more precise, a Police officer, to decide on the use of means of the physical coercion and subsequently to execute such a compulsion. However, even in the case of accumulation of the indicated decision-making and executive powers, these two different activities are clearly distinguished here. Another form of the Police activity, also with hybrid features, is included in Art. 40 of the Act on Upbringing in Sobriety and Counteracting Alcoholism, bringing in the delinquent in order to get him sober. Nevertheless, unlike the aforementioned application of the direct physical coercion against a person brought in to get sober and detained in a police unit, the Act on Upbringing in Sobriety and Counteracting Alcoholism, while regulating the direct physical coercion in order to sober up, does not distinguish *expressis verbis* into two separate and different actions that make up the aforementioned coercion. However, the analysis of the normative material leaves no doubt that a police officer who notices a person in a state of intoxication, determines whether his behavior causes scandal in a public place or in a workplace, whether he is in circumstances that threaten his life or health, or whether he is a threat for life or health of others. If he determines the occurrence of the phenomenon of public intoxication in a specific case, then he decides to bring the person generating such a danger to one of the specified places in order to get sober. The mere bringing in of the intoxicated person in order to sober up is therefore a material-technical activity carried out by a police officer, who must first ascertain the occurrence of this phenomenon.

3.4.4. Although the dominant position among the legal forms of the police activities in the alcoholic sphere is occupied by a variety of executive forms, it should be noted that the law also provides the Police, in the activities of the alcoholic sphere, with the possibility of resorting to non-executive forms. These forms include, among others, informing the person affected by domestic violence by the police officer: about the possibility and method of submitting a request that the court oblige the person using domestic violence to leave the shared flat and its immediate surroundings or prohibit approaching the flat and its immediate surroundings, about the possibility of obtaining support in the appropriate local social welfare center, a specialist support center for victims of domestic violence and other institutions providing assistance to victims of domestic violence. The non-executive forms of the Police also include, in the event of an order to immediately leave the jointly occupied flat and its immediate surroundings or

a ban on approaching the flat and its immediate surroundings, instructing the person using domestic violence about the reasons for issuing them and about the possibility and method of submitting them by the police officer. It also applied to the possibility and way of lodging complaints, as well as informing about the contact details of the locally competent facilities providing accommodation and conducting corrective and educational interventions or psychological and therapeutic programs for people using domestic violence.

3.5. At least briefly, due to the limited size of this study, the problem of the legal nature of the determination of actions taken by the Police in the alcohol sector should be considered. It is mainly about examining the structure of competence provisions in order to determine whether they impose an obligation on the Police to take specific actions, or whether they only legally allow to take these legal actions. Needless to say, the legislator often clearly formulates an obligation for the Police to take specific actions in a concrete situation. An example of which could be an unequivocal obligation of a police officer to retain a driving license against receipt in the event of a justified suspicion that the driver is intoxicated or under the influence of alcohol, included in Art. 135, paragraph 1, point 1 of the Act on the Traffic Law. However, from time to time the provisions make the emergence of the obligation to act by the Police dependent on a prior request in this matter submitted by a competent entity. In Art. 105, point 1 of the Act on Social Welfare, the Police's obligation to provide the head of a Social Welfare Center, the director of the Social Service Center or a social worker, in order to make decision on the grant of ongoing benefit or amount of social assistance benefits. Its aim is to determine the amount of payment for social assistance benefits or for verification of entitlement to social assistance benefits, the amount of these benefits or payment for these benefits. A specific reinforcement of this obligation is the statutory deadline for its implementation (within 7 days from the date of receipt of the application in this subject matter).

In the analyzed subject, one can also indicate competence provisions, the application of which by the Police requires prior interpretation, their decoding in order to establish the existence of the obligation contained therein or the possibility of action. For example, in Art. 40 of the Act on upbringing in sobriety and counteracting alcoholism, considering public intoxication, which refers to the role of the Police in relation to this occurrence, there is no obligation *expressis verbis* or the right of the Police to react to this phenomenon in the form of bringing in of the person in the state of inebriation to the indicated place by the law in order to sober up. However, the systemic and functional interpretation of paragraph 1 of this regulation constitutes grounds for considering that the public intoxication found by a Police officer in a specific case requires to take further action (bringing in to sober up) and leaves no choice as to whether or not to take this action. Needless to say, we deal with the obligation to act in a situation where a Police officer decides that the public interest or the interest of an individual requires bringing in a person

generating public intoxication in order to sober up, and that resignation from this action would be detrimental to one of these interests[29]. This group of legal provisions also includes Art. 15a of the Act on the Police, pursuant to which a police officer has the right to detain perpetrators of domestic violence who pose a direct threat to human life or health in the manner specified in Art. 15. The law specified in this provision should be understood as the competence to detain perpetrators of domestic violence and the corresponding obligation for perpetrators of domestic violence to submit to these activities. The right of detention referred to in this provision cannot be understood as only the possibility of detaining perpetrators of domestic violence who pose a direct threat to human life or health. The police officer will decide whether to arrest perpetrators of domestic violence or not. Based on the fact that he poses a direct threat to human life or health, he should be detained. The defined competences of the police officer should be understood in a similar way in Art. 129, paragraph 2, point 8 of the Act on the Traffic Law, under which he is entitled to prevent an intoxicated person or person under the influence of alcohol from driving. If the Police officer determines that the person driving the vehicle is under the influence of alcohol or intoxicated, he should prevent him from driving the vehicle. The entitlement provided for in the aforementioned provision is understood here as a competence to act, which is the responsibility of the addressee of this action, that is a person driving the vehicle under the influence of alcohol or an intoxicated person – an obligation to submit to the actions of the police officer. However, by no means the aforementioned right of a police officer should be understood as the right to choose between acts and omissions.

The aforementioned normative material containing the provisions on competence, illustrates that the actions of the Police in the alcoholic sphere are either their obligation clearly defined by law, or their obligation that has been defined by the legislator with the use of misleading phrases in this case, among others, "has the right", "maybe", which require an interpretation. Moreover and fortunately rarely, their obligation is not directly defined, the existence of which is, however, encoded in the provisions requiring interpretation.

4. In conclusion, it should be emphasized that the problems related to alcohol, both individual and general, determine the important place and role of the Police in the field of education in sobriety and counteracting alcoholism.

Primarily, the Police undertake actions in individual situations, these are actions directed at an individually designated addressee, that is most often against an intoxicated person, addicted to alcohol, generating various undesirable occurrences, but these actions are also directed at people affected by these phenomena, which require protection against them. These actions are taken in a specific situation, such as driving under the influence of alcohol in a given place and time of a specific marked vehicle. The activities of the Police are diverse, among others,

[29] B. Jaworska-Dębska, *Policja a nietrzeźwość*…, p. 79.

they include broadly understood intervention activities, signaling activities, assistance activities, activities consisting in the execution of a court order on compulsory bringing in, or information activities. At the same time, it is essential to emphasize the particular importance of the police activities in general, activities that provide a given community a sense of security. Additionally, it is worth noting here that the feeling of security in general is often associated not only with specific actions of a police officer, but with his presence in the right place (public or private) and at the right time. It is extremely essential for the importance of the Police in building a sense of security in the society.

The role of the Police in the alcohol sphere is also special due to its characteristics (it is a uniformed service operating throughout the country) and a wide arsenal of resources (an example of which could be a direct coercion) at its disposal, it can effectively react to negative occurrences related to the use of alcohol. The Police also have the possibility, particularly valuable in this regard, to quickly react to the phenomena that require it (an example of which are public intoxication, driving a vehicle by a person under the influence or in the state of drunkenness), a reaction allowing for the elimination of a given occurrence and the threat to public policy related to it.

It is worth paying attention to another aspect of the assessment of the place and role of the Police in the field of upbringing in sobriety and counteracting alcoholism. It should be noted that the social evaluation of the Police's activity in the alcoholic sphere is pivot not only on the factors that depend on it, that is, on the speed of its operation, the accuracy of the selection of measures, effectiveness and legality. This assessment, usually based on the effects of the Police's activities, also depends on external factors, that is independent Police. The aforementioned factors include normative solutions that raise doubts as to their legitimacy, providing for the possibility of detaining a person generating public intoxication in a Police unit, who is brought in to such an institution by a police officer in order to sober up. This solution puts the Police in a difficult situation, because police units cannot provide health services to detained persons, even to the extent that can be done by sobering stations or facilities, that is the requirement for these persons to undergo medical examinations. The difficulty of this situation for the Police is that the person brought into the police unit is not (unlike the person brought into the sobering station or facility) a subject to immediate medical examination. Therefore, if the health condition of this person deteriorates during his stay in this unit, it may have an impact – doubtful or justified – on the assessment of the actions of the Police in this regard. Nowadays, when being brought in to sober up and being detained in a police unit cannot be treated in terms of repression, for the aforementioned solution does not find any more serious justification. The only argument for leaving it is the fact that the network of police units is larger than the network of sobering stations. However, this argument loses its relevance in view of the possibility of bringing in people to their place of residence in order to sober up. Nevertheless, this one is still used extremely rarely.

Bibliography

Blicharz J., *Udział polskich organizacji pozarządowych w wykonywaniu zadań administracji publicznej*, Wrocław 2005.

Budzisz R., Jaworska-Dębska B., Wlaźlak K., *Rola samorządu terytorialnego w zakresie wychowania w trzeźwości i przeciwdziałania alkoholizmowi (cz. I)*, „Studia Prawno-Ekonomiczne" 2009, Vol. LXXIX.

Budzisz R., Jaworska-Dębska B., Wlaźlak K., *Rola samorządu terytorialnego w zakresie wychowania w trzeźwości i przeciwdziałania alkoholizmowi (cz. II)*, „Studia Prawno-Ekonomiczne" 2009, Vol. LXXX.

Fundowicz S., *Decentralizacja administracji publicznej w Polsce*, Lublin 2005.

Głuchowski M., *Prowadzenie roweru po spożyciu alkoholu w prawie polskim i niemieckim*, „Prokuratura i Prawo" 2018, No. 4.

Guziejewska A.M., *Trzeci sektor – kilka wątpliwości terminologicznych*, „Przegląd Prawa Publicznego" 2007, No. 7.

Jaworska-Dębska B., *Policja a nietrzeźwość publiczna. Przeszłość, teraźniejszość, perspektywy* [in:] *100-lecie Policji. Organizacja i funkcjonowanie*, Rzeszów 2019.

Jaworska-Dębska B., *Charakter i konstrukcja zadań samorządu terytorialnego w przedmiocie wychowania w trzeźwości i przeciwdziałania alkoholizmowi* [in:] *Charakter i konstrukcja zadań samorządu terytorialnego*, eds. M. Stec, S. Płażek, Warszawa 2017.

Kodeks wykroczeń. Komentarz, ed. T. Bojarski, Warszawa 2015.

Korczak J., *Niewładcze formy działania Policji* [in:] *100-lecie Policji. Policja. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019.

Koszowski M., *Przeciwdziałanie uzależnieniom. Regulacje prawne*, Warszawa 2019.

Lebowa D., Maciejko W., *Gminna komisja rozwiązywania problemów alkoholowych*, Warszawa 2011.

Niżnik-Dobosz I., *Władztwo organów Policji w multicentrycznym systemie źródeł prawa* [in:] eds. E. Ura, M. Pomykała, S. Pieprzny, *100-lecie Policji. Policja. Prawne formy działania*, Rzeszów 2019.

Pieprzny S., *Ochrona bezpieczeństwa i porządku publicznego w prawie administracyjnym*, Rzeszów 2007.

Prawo administracyjne, ed. J. Boć, Wrocław 2007.

Pruszkowski R., *Obowiązki jednostek samorządu terytorialnego w zakresie przeciwdziałania alkoholizmowi*, „Finanse Komunalne" 2002, No. 2.

Skrzydło-Niżnik I. [in:] I. Skrzydło-Niżnik, G. Zalas, *Act o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi. Komentarz. Doktryna. Orzecznictwo*, Kraków 2002.

Smoktunowicz E., *Prawo zrzeszania się w Polsce*, Warszawa 1992.

Stahl M., *Niepubliczne podmioty administrujące* [in:] *System Prawa Administracyjnego*, Vol. VI: *Podmioty administrujące*, Warszawa 2011.

Szałkiewicz A., *Ocena procedury „Niebieskie Karty" – problematyka administracyjnoprawna* [in:] *Prawne i organizacyjne aspekty funkcjonowania administracji publicznej*, eds. E. Olejniczak-Szałowska, B. Glinkowska, M. Kapusta, Łódź 2012.

Szreniawski J., *Związki wyznaniowe* [in:] *Prawo administracyjne ustrojowe. Podmioty administracji publicznej*, eds. J. Stelmasiak, J. Szreniawski, Bydgoszcz–Lublin 2002.

Wilczyński P., *Podmioty niepubliczne w sferze administracji publicznej*, „Państwo i Prawo" 2002, No. 2.

Summary

The Police as a uniformed service, functioning throughout the country, is established in order to take care of security and public order. The Police occupy a special place among other public administration bodies operating in this field. This place of the Police undoubtedly follows the fact that it func-

tions on the basis of a general competence regulation in the scope of ensuring security and public order. Alcohol and its abuse, illegal consumption or illegal trade are one of the most common factors generating situations leading to breach of safety and order in many areas of public and private life. Furthermore, is the fact that as a uniformed service with power, it has the ability to use police coercion.

Keywords: alcohol, security and public order, the Police as a uniformed service

MIEJSCE I ROLA POLICJI W WYCHOWANIU W TRZEŹWOŚCI I PRZECIWDZIAŁANIU ALKOHOLIZMOWI

Streszczenie

Policja jako funkcjonująca na terenie całego kraju służba mundurowa powołana do dbałości o bezpieczeństwo i porządek publiczny zajmuje szczególne miejsce wśród innych organów administracji publicznej działających w terenie. To miejsce Policji wynika niewątpliwie z tego, że działa ona na podstawie ogólnej normy kompetencyjnej w zakresie zapewnienia bezpieczeństwa i porządku publicznego, zaś alkohol i jego nadużywanie, nielegalne spożywanie lub nielegalny obrót nim to jeden z najczęstszych czynników generujących sytuacje prowadzące do naruszeń bezpieczeństwa i porządku publicznego w wielu płaszczyznach życia publicznego i prywatnego. Nadto ogromne znaczenie ma też okoliczność, iż jako służba mundurowa dysponująca władztwem ma ona możliwość stosowania przymusu policyjnego.

Słowa kluczowe: alkohol, bezpieczeństwo i porządek publiczny, Policja jak służba mundurowa

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ADMINISTRATIVE AND LEGAL DIMENSION OF THE POLICE COOPERATION WITH INTERNATIONAL ENTITIES

Introduction

The police, like a number of other police units, undertakes complex but socially important tasks, aimed at ensuring the level of security. Its main role is to protect people from illegal activities that undermine their right to life, health or safety. The aim is also to maintain a state of peace and public order in the whole country. Thus, it takes care of a number of values that are extremely important not only for individuals, but also for entire social groups. It is characterized by a great variety of tasks assigned to it and a presumption of competence in matters of public safety and order. Therefore, it can be said that despite being classified as a special administration in the aforementioned matters, it becomes a body with general competence.

It is also noteworthy that it uses a variety of operational forms and methods that result from the provisions of generally applicable law. The nature of protected values causes that the basic form of its activity is the ruling legal function. In practice, the forms provided for the entire public administration are used, as well as the specific ones, the application of which is within the competence of uniformed services or the Police. They are increasingly used as an auxiliary or main form, which are referred to as non-executive functions. In this respect, the cooperation and collaboration of the Police with other entities, which are sometimes undertaken on the basis of statutory authority, but often result from the need for joint action in a specific area, are of great importance.

This unit mainly cooperates with public administration, social organizations and private administration entities. For many years numerous forms of international cooperation with services and other organizations working for the benefit of security have been undertaken. For this reason, at the beginning of deliberations, a hypothesis was adopted that the contemporary Police is not able to act

effectively and efficiently without cooperation with foreign entities. In order to verify this assumption, it is necessary to analyse the importance of the Police's international cooperation and to point out its main elements. A short analysis of historical and legal conditions of international cooperation of the Polish Police will also be helpful in this respect.

The origins of international cooperation

Opinions on the beginnings of the international Police cooperation are not unanimous, but it seems that, in the opinion of most researchers, this cooperation has its roots in the 19th century. As early as 1888, Austria, Belgium and the Netherlands concluded an agreement providing for the exchange of information on criminals on their territory – the beginning of police cooperation[1]. This agreement could be the beginning and synonym for implementing the concept of European police cooperation. The post-war conflict period, which was the First World War, seems to be a significant time.

After the end of the First World War, the International Criminal Police Commission was established in order to become the predecessor of Interpol[2]. Its beginnings date back to 1914, when the International Criminal Police Congress was held in Monaco. In 1923, the International Criminal Police Commission was established in Vienna and since 1956 has been acting as the International Criminal Police Organization. Interpol, the International Criminal Police Organization, is now the world's largest international police organization[3]. Poland's cooperation with this organization began from its establishment and lasted until 1952, when there was a break in contacts. Poland's re-entry took place on 27 September 1990, and eight years later the Polish Interpol Office was transformed into the International Police Cooperation Office[4].

In the 70s of the 20th century there was an intensification of criminal activities, in particular acts of terrorism. A very serious problem was the growing organized crime, drug trafficking and "money laundering". Therefore, there were three main forms of international criminal activity which forced Western European countries to try to combine their efforts for combating them[5]. On 29 June 1976 in Luxembourg, the organization TREVI was established by representatives of the EEC countries to exchange experiences, police officers and a range of information

[1] A. Misiuk, A. Letkiewicz, M. Sokołowski, *Policje Unii Europejskiej*, Warszawa 2011, p. 152.

[2] M. den Boer, *Rozwój współpracy policji: rys historyczny* [in:] *Układ z Schengen: współpraca policji i organów sprawiedliwości po Maastricht*, ed. J. Beczała, Łódź 1998, p. 34.

[3] M. Chrzanowski, *Interpol – rola organizacji międzynarodowych we współczesnym świecie*, „Studenckie Zeszyty Naukowe" 2009, No. 19, p. 86.

[4] *Ibidem*, p. 92.

[5] M. den Boer, *Rozwój współpracy*…, pp. 34–35.

on terrorist acts. Over the years it has undergone numerous changes, extending the scope of cooperation to e.g. organized crime, drugs, public order problems, and immigration issues. Within the TREVI police cooperation, means of communication have been established, national meeting centres have been set up, information exchange and cooperation on combating terrorism and serious crime, civil aviation and nuclear safety, natural disasters, police techniques and equipment have been intensified, and liaison officers and police officers have been exchanged[6]. The TREVI group, acting as an informal organization, existed until the Treaty on European Union entered into force on 1 November 1993.

Under the Maastricht Treaty, the European Drugs Unit (EDU) was established in 1992 to support the fight against drug crime and "money laundering". It was the precursor of the European Police Office – Europol, which was established on its basis in July 1999. Poland became a member of Europol on 1 November 2004, which was related to its accession to the European Union. The aim of this organization is to increase the effectiveness of competent authorities of the Member States and cooperation between them in preventing and combating serious international organized crime and terrorism[7].

In 1985 the Schengen Agreement was signed, in 1990 the Convention implementing the Schengen Agreement, and the entry into force of the provisions of the Agreement and the Convention took place on 26 March 1995[8]. The Schengen Agreement is strictly related to European cooperation, which in combination with the principle of free movement of persons is a driving force for police cooperation. It is worth mentioning here the Schengen Information System, which is a collection of a number of data used by authorized entities, such as the Border Guard or the Police. The SIS is part of a whole range of compensatory (so-called "back-up") measures aimed at counterbalancing the negative effects of the abolition of border controls between the countries that have signed the Schengen Agreement[9].

The issue of cooperation within the public administration bodies gained a new dimension with the accession of Poland to the European Union. At that moment, the issue of cooperation of Polish authorities with EU bodies appeared, especially with the European Commission, as well as with bodies of other EU member states[10]. In this respect, the Polish Police could not remain passive, as a modern European police unit should undertake cooperation with European Community entities.

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[6] A. Misiuk, A. Letkiewicz, M. Sokołowski, *Policje Unii Europejskiej*, pp. 154–155.

[7] *Ibidem*, p. 156.

[8] M. den Boer, *Rozwój współpracy…*, p. 39.

[9] M.Th. Ford-Clasen, *System informacyjny Schengen (SIS)* [in:] *Układ z Schengen: współpraca policji i organów sprawiedliwości po Maastricht*, ed. J. Beczała, Łódź 1998, p. 61.

[10] J. Zimmermann, *Prawo administracyjne*, Warszawa 2012, p. 153.

Forms of international cooperation

In order to carry out the tasks assigned to it by normative acts, the Police use a whole range of operational forms and methods that are allowed by law. A specific area of activity is the international cooperation of the Police, which takes place in forms that are specific and adapted to sometimes complicated conditions. The basis for cooperation with police forces of other countries and their international organizations, as well as with bodies and institutions of the European Union is to a large extent the Act on the Police, international agreements and settlements and other legal regulations. International Police cooperation is carried out on the basis of governmental and departmental legal acts, as well as documents enabling local cooperation in border areas[11].

The Police Chief Commander, using the statutory delegation included in Art. 7(1)(2) of the Act on the Police, which grants him the right to determine the methods and forms of performing tasks by individual police services, to the extent not covered by other provisions issued on the basis of the Act, regulated the issue of the international Police cooperation in an act of internal management. Ordinance No. 92 of the Police Chief Commander of 29 January 2010 on the organization and implementation of international undertakings specified methods and forms of organization and implementation of international undertakings by the Police[12].

When analysing regulations related to international activities, first of all it is necessary to indicate the entities authorized to carry out such activities, which are the heads of organizational units of the Police Headquarters and organizational units of the Police. Their task is to organize and implement international undertakings, taking into account the directions of international cooperation defined by the Police Headquarters.

The above mentioned normative act clearly distinguishes between operational and non-operational police cooperation. Referring to the operational Police cooperation – this should be understood as activities of the Police related to the performance of operational, exploratory or investigative activities within the international police cooperation[13]. Operational cooperation includes primarily the exchange of information through:

- The Schengen Information System (SIS) and the National SIRENE Office (for the Schengen States),
- EUROPOL (European Police Office, operating only within the EU),
- INTERPOL (a police organization to assist law enforcement authorities in the fight against all forms of crime),

[11] B. Hołyst, *Policja na świecie*, Warszawa 2013, p. 1133.

[12] Dz.Urz. KGP 2019, Item 2.

[13] § 1, Section 3, Item 5 of the Ordinance No. 92 of the Police Chief Commander of 29 January 2010 on the organization and implementation of international projects.

– cooperation within the network of Polish Police Liaison Officers operating in several countries of the European Union and selected non-EU countries, as well as cooperation with foreign liaison officers accredited in Poland,
– direct access to police databases (missing and wanted persons, dactyloscopic cards, DNA profiles, stolen vehicles and documents etc.)[14].

In turn, non-operational Police cooperation includes activities of the Police, other than those related to carrying out operational, exploratory or investigative activities as a part of international police cooperation[15]. It is aimed at developing methods, forms and legal basis for operational police cooperation, i.e. preparation for actual activities[16]. Non-operational cooperation consists in creating EU law and learning about legal solutions and regulations applicable in other countries, as well as establishing contacts with police representatives of other countries. In carrying out non-operational cooperation, the Polish Police obtains EU funds, access to technology and the most modern specialist equipment. Non-operational cooperation also involves exchange and training cooperation with other police institutions from EU Member States and through such EU agencies and bodies as the CEPOL European Police Academy (Collège Européen de Police)[17]. The activity of the Polish Police on the international arena is also expressed through participation in foreign peacekeeping missions.

According to B. Hołyst, "the current system of the Police cooperation from various European countries is sometimes referred to as a patchwork. Three main planes can be distinguished:
1) macro – at the level of which international agreements are established and actions are taken to harmonize criminal law,
2) mezo – concerning organizational structures, practice and taking actions by police services,
3) micro – covering research on specific crimes, as well as preventing and combating specific forms of crime"[18].

The international Police cooperation is mainly based on a number of contacts with various organizations and entities which vary in terms of their objectives and tasks. There are different planes and areas of activity undertaken in the cooperation, and it is characterized by striving to achieve specific effects in the issues of public safety and order. For this reason, it seems important to briefly describe the entities with which the Police cooperate.

[14] More: http://www.info.policja.pl/inf/wspolpraca-miedzynarod/72445,Wspolpraca-miedzynarodowa.html (27.02.2020).

[15] § 1 Section 3 Item 7 of the Ordinance No. 92 of the Police Chief Commander of 29 January 2010 on the organization and implementation of international projects.

[16] B. Jaworski, *Pozycja prawna Komendanta Głównego Policji jako centralnego organu administracji rządowej*, Rzeszów 2016, p. 310.

[17] http://www.info.policja.pl/inf/wspolpraca-miedzynarod/72445,Wspolpraca-miedzynarodowa.html (27.02.2020).

[18] B. Hołyst, *Policja na świecie*, p. 1131.

Entities and areas of cooperation

When analysing the international cooperation of the Police, it is necessary to indicate what the doctrine of cooperation is, and what collaboration is. These concepts have broad and sometimes identified meanings. Cooperation is understood as collaboration consisting in coordination of implemented undertakings and functions established within the division of work[19]. Collaboration is a kind of bond connecting entities that are not organizationally related and independent from each other[20]. This term is most often understood as various types of relations taking place between individuals and social groups acting collectively, in an organized manner, while pursuing common goals[21].

The authorization to cooperate within the public administration system may be of a general or detailed nature, the convergence of objectives and tasks as well as general political and legal basis is sufficient to establish cooperation[22]. The structure of the international Police cooperation results from legal conditions, often from substantive law provisions, and bilateral and multilateral agreements concluded. The scope of the international Police cooperation includes cooperation between the Polish Police and international police organizations; cooperation with police forces of other countries[23].

The dominant act relating to international cooperation is the Act of 6 April 1990 on the Police[24]. Art. 1(2) of the Act of 6 April 1990 on the Police provides for basic tasks of the Police, which include the following "cooperation with police forces of other countries and their international organizations, as well as with European Union bodies and institutions on the basis of international agreements and settlements and separate regulations"[25]. In carrying out this task, the Police cooperates with numerous organizations such as Interpol, Europol, CEPOL, and also creates the so-called "common contact points" or designates liaison officers.

As an international organization, Interpol operates in 194 countries around the world, and its main goal is to help law enforcement authorities of individual countries in the fight against all forms of crime. The legal basis for Interpol's

[19] B. Kożuch, *Cele i korzyści współpracy organizacji publicznych i pozarządowych* [in:] *Wpływ przemian cywilizacyjnych na prawo administracyjne i administrację publiczną*, eds. J. Zimmermann, P.J. Suwaj, Warszawa 2013, p. 345.

[20] M. Stahl, *Zagadnienia ogólne* [in:] *System Prawa Administracyjnego*, Vol. VI: *Podmioty administrujące*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2011, p. 82.

[21] B. Kożuch, *Cele i korzyści*…, p. 345.

[22] M. Stahl, *Zagadnienia ogólne*, p. 82.

[23] Z. Nowakowski, M. Pomykała, K. Rajchel, H. Tokarski, *Struktura organizacyjna Policji* [in:] *Administracja bezpieczeństwem i porządkiem publicznym ze szczególnym uwzględnieniem prawnych i organizacyjnych aspektów Policji*, ed. K. Rajchel, Warszawa 2009, p. 195.

[24] Dz.U. 2019, Item 360.

[25] Art. 1 Section 2 Item 7 of the Act on the Police.

operation is the Statute passed in 1956. Other important documents regulating its work include General Regulations, Information Processing Regulations, Standards of Interpol National Offices Operation and Financial Regulations[26]. The Statute of the International Criminal Police Organization – Interpol, was adopted in Vienna on 13 June 1956 and published in the Journal of Laws (pol. Dziennik Ustaw) of 2015[27]. The Government Statement of 24 September 2015 on the Statute of the International Criminal Police Organization – Interpol is a supplement[28].

Interpol consists of bodies, among which the most important is the General Assembly, composed of representatives of each member. It takes all decisions concerning the organization's policy, finances, methods of operation and activity. Another is the Executive Committee, which consists of thirteen members, the President, three vice-presidents and nine delegates representing four regions (Africa, America, Asia and Europe). The bodies also include the General Secretariat located in Lyon, headed by the Secretary General. The Secretariat has six regional offices in Argentina, El Salvador, Kenya, Ivory Coast, Zimbabwe, Thailand and a United Nations liaison office in New York. There are National Offices in each Member State. They are contact points for the Secretariat and other members when they need assistance in the fight against cross-border crime and the location and detention of fugitives[29]. In Poland, the National Office is located in the Office for International Police Cooperation of the Police Headquarters.

The internationalization of crime makes coordination among different actors crucial in maintaining a global security architecture. As Interpol is a global organization, it can provide this platform for cooperation; enabling the police to cooperate directly with their counterparts, even between countries that do not have diplomatic relations[30]. The organization also offers its members very broad opportunities for the Police cooperation in the fight against and prevention of crime. The Polish Police uses among others a modern ASF (Automated Search Facility) system, which includes police data on stolen motor vehicles and works of art[31].

Thanks to cooperation with Interpol, the Polish Police has the following:

– 24/7 access to Interpol's IT resources, containing data on wanted and missing persons, stolen vehicles, documents and works of art, as well as specialized information on international criminal activities,

[26] http://isp.policja.pl/isp/aktualnosci/7811,Statut-Miedzynarodowej-Organizacji-PolicjiKryminalnej.html (26.02.2020).

[27] Dz.U. 2015, Item 1758.

[28] Dz.U. 2015, Item 1759.

[29] More: https://antykorupcja.gov.pl/ak/import/instytucje-zaangazowane/3681,Interpol-Miedzynarodowa-Organizacja-Policji.html (26.02.2020).

[30] https://www.interpol.int/Who-we-are/What-is-INTERPOL (26.02.2020).

[31] M. Śmigasiewicz, E. Zalewska, *Współpraca w ramach Interpolu* [in:] *Współczesny wymiar funkcjonowania Policji*, eds. B. Wiśniewski, Z. Piątek, Warszawa 2009, p. 72.

– liaise with the criminal services of the police forces of all Member States in order to obtain the necessary information, as well as to provide it for the criminal services of other countries to initiate concrete actions[32].

Polish police officers improve their skills and raise their knowledge during trainings and conferences organized by this organization. The Polish Interpol office has become a central centre for international police information exchange[33]. This expertise provides support at national level in the fight against crime in three key areas: terrorism, cybercrime and organized crime.

Similar issues are covered by Europol, but its impact is related to the 27 countries of the European Union and cooperation with partner countries. Europol's mission is to support Member States' law enforcement authorities in combating serious crime and terrorism[34]. Europol, like Interpol, is a huge database aimed at facilitating and accelerating information exchange and intelligence[35]. It is based on Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for the Cooperation of Law Enforcement Agencies (Europol), replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA[36].

Europol is headed by an Executive Director, who is the legal representative of Europol and is appointed by the Council of the European Union. The current Europol Executive Director is Catherine De Bolle, who took up this position in May 2018. She is assisted by three Deputy Executive Directors: Wil van Gemert – Operational Directorate; Jürgen Ebner – Management Directorate; Luis de Eusebio Ramos – Capability Directorate. On 1 May 2017, following the entry into force of the new Regulation, Europol officially became the European Union Agency for law enforcement cooperation. Europol employs more than 1 000 staff members, 220 Europol liaison officers and around 100 criminal analysts who support more than 40 000 international investigations annually[37]. The Polish Europol Office has also been concentrated in the International Police Cooperation Office of the Police Headquarters.

As a platform for cooperation between police, customs, border protection and partly special services, Europol has a multiagency character[38]. It functions as: a support centre for law enforcement operations; a centre for information on

[32] M. Gierach, *Poziomy międzynarodowej współpracy policyjnej w kontekście realizacji w zakresie wspólnych działań* [in:] *Policja w sytuacjach kryzysowych. Współpraca transgraniczna w ramach Trzeciego Filaru Unii Europejskiej*, Białystok 2006, p. 49.

[33] I. Gawłowicz, M.A. Wasilewska, *Międzynarodowa współpraca w walce z przestępczością (międzynarodowe trybunały karne, Interpol)*, Szczecin 2004, p. 131.

[34] T. Safjański, *Europejskie Biuro Policji Europol. Geneza, główne aspekty działania, perspektywy rozwoju*, Warszawa 2009, p. 62.

[35] I. Gawłowicz, M.A. Wasilewska, *Międzynarodowa współpraca*…, p. 129.

[36] EU Official Journal 2016, No. L 135/53.

[37] More: https://www.europol.europa.eu/about-europol (26.02.2020).

[38] T. Safjański, *Europejskie Biuro*…, p. 69.

criminal activities; and a centre of expertise in law enforcement. It undertakes operational activities that focus in particular on combating: drug trafficking, human trafficking, facilitating illegal immigration, cybercrime, intellectual property crime, cigarette smuggling, euro counterfeiting, VAT fraud, money laundering and asset tracking, mobile organized crime groups, terrorism.

The most important institutions dealing with the Police cooperation in Europe include CEPOL – the European Union Agency for the Law-Enforcement Training. It is one of the European Union institutions that aims to optimize cooperation between the police training centres of the EU Member States and develops, implements and coordinates training for law enforcement officers. It contributes to making Europe safer by facilitating cooperation and knowledge sharing between law enforcement officials from EU Member States and, to some extent, from third countries, on issues arising from the EU's security priorities; in particular, cooperation and information exchange within the EU policy cycle on serious and organized crime[39].

The most recent legal basis for the CEPOL's operation entered into force on 1 July 2016, Regulation (EU) 2015/2219 of the European Parliament and of the Council of 25 November 2015 on the European Union Agency for the Development of Law-Enforcement Training (CEPOL)[40]. Pursuant to Art. 6(1) of this Regulation, "each Member State shall establish or designate a national unit which shall act as a liaison body with the CEPOL in the network of national training institutes for the training of law-enforcement personnel in the Member States. The CEPOL National Unit located in the Department for the Coordination of Non-Operative Cooperation BMWP KGP deals with all cooperation within the CEPOL, including among others the coordination of in-service training activities within the country, coordination of the exchange programme, recruitment of national participants in training activities organized outside the Republic of Poland, maintaining contact with the CEPOL Secretariat, Member States and third countries, EU agencies and institutions, security bodies in the Republic of Poland, developing and giving opinions on projects and positions, promoting the CEPOL training offerings, advising on current practice and procedural requirements"[41].

One of the most important forms of cooperation within the CEPOL are training courses organized in cooperation with individual Member States, focusing on issues of a pan-European nature, which are of key importance to the CEPOL and aimed primarily at raising awareness of European police cooperation[42]. Poland

[39] More: www.europarl.europa.eu/factsheets/pl (27.02.2020).

[40] EU Official Journal 2015, No. L 319/1.

[41] More: http://www.info.policja.pl/inf/wspolpraca-miedzynarod/cepol/51106,CEPOL-Agencja--Unii-Europejskiej-ds-Szkolenia-w-Dziedzinie-Scigania.html (27.02.2020).

[42] B. Wiśniewski, *Współpraca w ramach Unii Europejskiej* [in:] *Współczesny wymiar funkcjonowania Policji*, eds. B. Wiśniewski, Z. Piątek, Warszawa 2009, p. 83.

organizes training projects on combating the most dangerous crime, such as organized crime and drugs, as well as on social prevention.

Referring to the administrative and legal dimension of police cooperation, it is important not to forget about activities related to the functioning of Poland in the Schengen area and the use of its IT system. Since 9 April 2013, a modern second generation Schengen Information System (SIS II) has been operating, which enables the processing of more data and the use of new functionalities.

The basis for establishment of the second generation Schengen Information System (SIS II) are two documents issued under Title VI of the EU Treaty, i.e. Regulation (EC) No. 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II)[43] and Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)[44]. The Regulation and the Decision replaced Art. 92–119 of the Convention implementing the Schengen Agreement as well as decisions and declarations of the Schengen Executive Committee on the SIS. The provisions of the Schengen acquis and the Community law on the SIS were implemented into the Polish legal order by the Act of 24 August 2007 on the participation of the Republic of Poland in the Schengen Information System and the Visa Information System[45]. The Act defines the principles and manner of implementation of the Republic of Poland's participation in the Schengen Information System and the Visa Information System, including the duties and powers of the authorities to issue alerts and to access data contained in the Schengen Information System and the Visa Information System via the National Information System (KSI)[46].

Poland's full legal capacity to operate in the Schengen Information System has been possible since 21 December 2007, when it joined the Schengen area. Therefore, the Police cooperation in this area mainly concerns cross-border Police cooperation and participation, as well as the use of the Schengen Information System (SIRENE)[47]. It includes measures to facilitate the maintenance of public security and order after the removal of border controls[48]. The main instruments of the Police cooperation in this area are cross-border hot pursuit and cross-border surveillance. The tasks of the SIRENE Office are carried out by: Section of the 24-hour International Flow of Information Service in the International

[43] EU Official Journal 2006, No. L 381/4.

[44] EU Official Journal 2007, No. L 205/63.

[45] Dz.U. 2019, Item 1844.

[46] Art. 1 of the Act of 24 August 2007 on the participation of the Republic of Poland in the Schengen Information System and the Visa Information System.

[47] B. Wiśniewski, *Współpraca w ramach*…, p. 85.

[48] P. Wawrzyk, *Współpraca policyjna a systemem informacyjnym Schengen II*, Warszawa 2008, p. 41.

Information Exchange Coordination Division and by the International Search Coordination Division of the Office for International Police Cooperation KGP[49].

The most important role in this level of international cooperation is played by Liaison Officers accredited by particular countries, who are intermediaries between law enforcement agencies of cooperating countries[50]. The Police Liaison Officer is a Police officer accredited to the Polish diplomatic post on the basis of the agreement on the rules of functioning of the positions of the Police and the Border Guard Liaison Officers in foreign posts of the Republic of Poland concluded in Warsaw on 24 March 2016 between the Minister of Foreign Affairs and the Minister of Internal Affairs and Administration.

The basic tasks of police liaison officers include:

- maintaining in the country of secondment ongoing contact with representatives of the services of the Central Police Unit, in particular: service for the fight against organized crime, fight against crime, economic crime, investigation service, as well as with the Interpol National Office, the Europol National Unit, the SIRENE Office and other liaison officers,
- inspiring and participating in the preparation of joint undertakings, e.g. coordinated operations in the border regions of Poland and accreditation countries,
- coordinating legal assistance provided by the police-militia of the accreditation countries to the Polish Police,
- exchange of information on the activities of other police departments in order to strengthen mutual cooperation[51].

At present, the Polish Police has liaison officers in the following 11 countries: Russian Federation, Ukraine, Federal Republic of Germany, Republic of Belarus, French Republic, Kingdom of Spain, Great Britain, Republic of Turkey, Kingdom of Norway, Hungary, Italian Republic. Liaison officers are supported and coordinated by the Liaison Officers Team of the Department of Foreign Missions and Liaison Officers of the International Police Cooperation Office of the Police Headquarters.

An indispensable element of international cooperation of the Polish Police is the peacekeeping missions carried out by police officers in various countries. Peacekeeping missions/observation missions/crisis management operations are one of the tools available to the international community aimed at conflict resolution and prevention of civil wars in unstable regions. They are also used to rebuild the damage caused by conflict and to ensure free and fair elections or referendums[52]. Peacekeeping missions are one of the forms of the international Police

[49] More: http://www.policja.pl/pol/sirene/polskie-biuro-sirene/57660,O-nas-czyli-jak-powstawala-polska-komorka-SIRENE.html (27.02.2020).

[50] M. Gierach, *Poziomy międzynarodowej współpracy*…, p. 50.

[51] More: http://www.info.policja.pl/inf/wspolpraca-miedzynarod/oficerowie-lacznikowi/52161,Oficerowie-lacznikowi-Policji.html (27.02. 2020).

[52] More: http://www.info.policja.pl/inf/wspolpraca-miedzynarod/misje-pokojowe/47732,Misje-pokojowe-informacje-ogolne.html (27.02. 2020).

cooperation with the primary aim of resolving armed conflicts and preventing civil wars, restoring post-conflict losses and ensuring democratic elections[53].

Currently, outside the country, Polish Police officers are on duty under the auspices of the European Union:

- in Georgia – European Union Monitoring Mission (EUMM Georgia): since 2008 – a total of 69 police officers,
- in Kosovo – European Union Rule of Law Mission (EULEX Kosovo):
  - Polish Police Special Unit – a total of 3317 police officers (1746 under UNMIK and 1571 under EULEX),
  - experts – a total of 45 police officers,
- in Ukraine – European Union's advisory mission to Ukraine (EUAM Ukraine): from 2015 – 9 police officers.

Under the auspices of the Organization for Security and Cooperation in Europe, they have been operating in Ukraine – OSCE Special Observation Mission (OSCE SMM Ukraine): since 2016 – a total of two police officers[54].

The Police cooperation takes on a special character at the European Union's internal borders, where so-called "common contact points" are established. These points of contact are provided by police, border guards and customs officers from neighboring countries. The main objective of these centres is to coordinate activities and exchange information relevant for ensuring public security and order, as well as combating crime. At present, the following facilities are operational: Centre for Police and Customs Cooperation in Barwinek, Centre for Police and Customs Cooperation in Trsten (on the border with the Slovak Republic); Common Centre in Kudowa Zdrój, Common Centre in Chotěbuz (Czech Republic); Polish-German Centre for Police and Customs Cooperation in Świecko; Centre for Cooperation of Border, Customs and Police Services of the Republic of Poland and the Republic of Lithuania based in Budzisko[55].

The Polish Police, and in particular the Police Headquarters, participates in the legislative process of the Council of the European Union. This is done through the participation of police experts in the Working Groups of the Council of the European Union and through the Central Police Headquarters' opinion on draft legislative acts of the European Union in the field of police cooperation[56]. Examples of the international Police cooperation could be multiplied and indicated in many different areas, but in order to show a coherent system it was necessary to limit to the most representative ones showing the importance of this issue.

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[53] B. Jaworski, *Pozycja prawna*…, p. 323.

[54] http://www.info.policja.pl/inf/wspolpraca-miedzynarod/misje-pokojowe/47732,Misje-pokojowe-informacje-ogolne.html (27.02. 2020).

[55] More: https://www.strazgraniczna.pl/pl/kontakt/punkty-kontaktowe-na-gr/686,Punkty-kontaktowe-na-granicy-wewnetrznej.html (27.02.2020).

[56] Z. Nowakowski, M. Pomykała, K. Rajchel, H. Tokarski, *Struktura organizacyjna*…, p. 198.

Conclusion

The analysis clearly shows that the beginnings of the Police cooperation can be traced back to distant times, and its intensification took place in the early 20th century. It can be said that the Polish Police already nearly a hundred years ago saw the need to function on the basis of information and experience exchange with other police forces and to function in global structures dealing with crime.

In practice the contemporary Police function in connection with police structures operating worldwide and within Europe. Active participation in such organizations as: Interpol, Europol, CEPOL or use of the Schengen acquis and the SIS II IT system guarantees access to the latest solutions and influences the effectiveness of actions taken by this uniformed formation.

The examples of the international Police cooperation and basic forms of action presented in the study indicate that cooperation with other entities has become a requirement of modern times. International cooperation in the era of developing threats of a supranational nature is something natural and necessary to effectively protect the safety of people, as well as to watch over public safety and order. The tasks specified in the Act on the Police also include those concerning cooperation, which point to the needs and trends in this respect and exclude any freedom of international activity. On the one hand, international cooperation has become a legal obligation and, on the other hand, a form which has a significant impact on the Police work.

Bibliography

Boer den M., *Rozwój współpracy policji: rys historyczny* [in:] *Układ z Schengen: współpraca policji i organów sprawiedliwości po Maastricht*, ed. J. Beczała, Łódź 1998.

Chrzanowski M., *Interpol – rola organizacji międzynarodowych we współczesnym świecie*, „Studenckie Zeszyty Naukowe" 2009, No. 19.

Ford-Clasen M.Th., *System informacyjny Schengen (SIS)* [in:] *Układ z Schengen: współpraca policji i organów sprawiedliwości po Maastricht*, ed. J. Beczała, Łódź 1998.

Gawłowicz I., Wasilewska M.A., *Międzynarodowa współpraca w walce z przestępczością (międzynarodowe trybunały karne, Interpol)*, Szczecin 2004.

Gierach M., *Poziomy międzynarodowej współpracy policyjnej w kontekście realizacji w zakresie wspólnych działań* [in:] *Policja w sytuacjach kryzysowych. Współpraca transgraniczna w ramach Trzeciego Filaru Unii Europejskiej*, Białystok 2006.

Hołyst B., *Policja na świecie*, Warszawa 2013.

Jaworski B., *Pozycja prawna Komendanta Głównego Policji jako centralnego organu administracji rządowej*, Rzeszów 2016.

Kożuch B., *Cele i korzyści współpracy organizacji publicznych i pozarządowych* [in:] *Wpływ przemian cywilizacyjnych na prawo administracyjne i administrację publiczną*, eds. J. Zimmermann, P.J. Suwaj, Warszawa 2013.

Misiuk A., Letkiewicz A., Sokołowski M., *Policje Unii Europejskiej*, Warszawa 2011.

Nowakowski Z., Pomykała M., Rajchel K., Tokarski H., *Struktura organizacyjna Policji* [in:] *Administracja bezpieczeństwem i porządkiem publicznym ze szczególnym uwzględnieniem prawnych i organizacyjnych aspektów Policji*, ed. K. Rajchel, Warszawa 2009.

Safjański T., *Europejskie Biuro Policji Europol. Geneza, główne aspekty działania, perspektywy rozwoju*, Warszawa 2009.
Stahl M., *Zagadnienia ogólne* [in:] *System Prawa Administracyjnego*, Vol. VI: *Podmioty administrujące*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2011.
Śmigasiewicz M., Zalewska E., *Współpraca w ramach Interpolu* [in:] *Współczesny wymiar funkcjonowania Policji*, eds. B. Wiśniewski, Z. Piątek, Warszawa 2009.
Wawrzyk P., *Współpraca policyjna a systemem informacyjnym Schengen II*, Warszawa 2008.
Wiśniewski B., *Współpraca w ramach Unii Europejskiej* [in:] *Współczesny wymiar funkcjonowania Policji*, eds. B. Wiśniewski, Z. Piątek, Warszawa 2009.
Zimmermann J., *Prawo administracyjne*, Warszawa 2012.

Summary

The modern police formation to which the Police in Poland aspires cannot be limited only to independent execution of tasks. Performing statutory tasks by the Police is related to undertaking various forms of cooperation and interaction with legally and organizationally diverse entities. Apart from national cooperation, legal regulations impose an obligation to cooperate with police forces of other countries and their international organizations, as well as with European Union bodies and institutions. The subject of deliberations is widely understood international cooperation of the Police and the role of entities responsible for its conduct. The areas of cooperation and forms in which it is undertaken have been investigated. Special research attention was also paid to legal regulations relating to police activity on the international arena. In the study attempts were made to assess the current system of international police cooperation.

Keywords: security administration, police, cooperation, international police cooperation

ADMINISTRACYJNOPRAWNY WYMIAR WSPÓŁPRACY POLICJI Z PODMIOTAMI MIĘDZYNARODOWYMI

Streszczenie

Nowoczesna formacja policyjna, do której aspiruje Policja w Polsce, nie może ograniczać się tylko do samodzielnego wykonywania zadań. Wykonywanie zadań ustawowych przez Policję wiąże się z podejmowaniem różnych form współpracy i interakcji z podmiotami zróżnicowanymi prawnie i organizacyjnie. Oprócz współpracy krajowej regulacje prawne nakładają obowiązek współdziałania z siłami policyjnymi innych krajów i ich organizacjami międzynarodowymi, a także z organami i instytucjami Unii Europejskiej. Przedmiotem artykułu jest szeroko rozumiana współpraca międzynarodowa Policji oraz rola podmiotów odpowiedzialnych za jej prowadzenie. Zbadano obszary współpracy i formy, w jakich jest ona podejmowana. Szczególną uwagę badawczą poświęcono regulacjom prawnym dotyczącym działalności Policji na arenie międzynarodowej. W badaniu podjęto próbę oceny obecnego systemu międzynarodowej współpracy policyjnej.

Słowa kluczowe: administracja bezpieczeństwa, policja, współpraca, międzynarodowa współpraca policyjna

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LEGAL FORMS OF ACTION IN THE POLICE

All activities of the administration must be based on a specific legal basis. This is a principle that has been enshrined in the Constitution. The form of action is a manifestation of the activity of entities that administer[1]. As E. Ura rightly points out, the legal form of administration is the type of specific activity determined by law, which may be used by the administration to handle a particular matter. This is equivalent to the concept of legal action in civil law[2].

The concept of legal forms of administration is a non-acute concept which does not have its only legal definition. It should be noted that this is a legal concept, differently defined on the basis of administrative case law as well as doctrine.

The nature of the tasks carried out by the Police creates the possibility of using different forms adapted to the legal circumstances provided for by law. Due to the nature of the tasks imposed on the Police, this formation most often uses imperious forms, but it should be noted that it can also support non-empowering activities in a supportive way[3].

In order to carry out its tasks, public administration has been equipped with so-called administrative authority. Thanks to it, this administration can unilaterally shape the legal situation of an administered entity, thereby realizing the assigned competences and carrying out the imposed tasks.

The term authority belongs to the category of vague terms that have not been given a clear legal and theoretical position. There are ongoing disputes among the representatives of the doctrine regarding the semantic scope of the notion of authority, its sources or legal nature. There is no doubt that the legal concept of authority significantly affects the way we understand many considerations about administra-

[1] K.M. Ziemski, *Podstawy problematyki* [in:] *System Prawa Administracyjnego*, Vol. V: *Prawne formy działania administracji*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2013, p. 4 n.

[2] E. Ura, *Prawo administracyjne*, Warszawa 2015, p. 107.

[3] B. Jaworski, *Policja administracyjna*, Toruń 2019, p. 106 n.

tive law and public administration[4]. Doctrinal solutions indicate that the term administrative authority appeared most often in the context of the structural element of the concept of public administration body, in the aspect of analyzing the considerations on the concept of administrative-legal relation and legal forms of administration[5]. In the interwar literature, the essence of power can be seen in the ability of state authorities to reliably and unilaterally establish prohibitions and orders for specific behavior, secured by the possibility of using state coercion to enforce them[6].

Administrative authority must result from public (state) authority. H. Jellinek understood administrative authority as the power to use administrative coercion and to exclude disputes from the jurisdiction of the courts. According to the author, administrative coercion was a legal category[7]. Another representative of the twentieth-century doctrine of T. Bigo professed the view that administrative authority was the power to use administrative coercion, excluding disputes from the jurisdiction of the courts[8].

Another example of presenting the relationship between administrative authority and an administrative body can be the position represented by M. Jaroszyński, who defined a state administration body as a separate part of the state apparatus, equipped by law with a specific scope of competence and exercising the supreme authority of the state in forms of administration[9].

In turn, J. Starościak pointed out that "the genus proximum for determining a state administration body is the power to use coercion" – within the limits set by applicable law[10].

It is impossible to disagree with K. Chochowski's thesis that administrative authority is now understood as a permanent element of the normative order and there is no indication that this state should change in the near future. Administra-

[4] More: P. Radziewicz, *Administracyjnoprawne pojęcie władztwa publicznego*, „Kwartalnik Prawa Publicznego" 2005, No. 4, p. 121 n.

[5] L. Bielecki, *Władztwo administracyjne jako istotna cecha definicji administracji publicznej* [in:] *O prawie administracyjnym i administracji. Refleksje*, eds. B. Jaworska-Dębska, Z. Duniewska, M. Kasiński, E. Olejniczak-Szałowska, R. Michalska-Biedziak, P. Korzeniowski, Łódz 2017, p. 31. More: Z. Pulka, *Władztwo administracyjne jako szczególna postać władzy państwowej*, „Acta Universitatis Wratislaviensis" 1992, No. 1313, p. 137 n.; L. Bielecki, *Władztwo administracyjne* [in:] *Prawo administracyjne*, eds. M. Zdyb, J. Stelmasiak, Warszawa 2016, p. 111.

[6] L. Bielecki, *Władztwo administracyjne*…, p. 30.

[7] G. Jellinek, *Allgemeine Staatslehre*, Bad Homburg 1959, p. 561.

[8] T. Bigo, *Stanowisko związków publicznoprawnych w polskim systemie administracyjnym*, Lwów 1928, p. 9.

[9] As cited in: M. Jaroszyński, M. Zimmermann, W. Brzeziński, *Polskie prawo administracyjne. Część ogólna*, Warszawa 1956, p. 161 n. A similar proposal for the definition of a state administration body was presented by K. Sobczak [in:] J. Służewski, O. Bujko, K. Sobczak, *Polskie prawo administracyjne*, Warszawa 1961, p. 57 n.

[10] P. Radziewicz, *Administracyjnoprawne pojęcie*…, p. 123, as cited in: J. Starościak, *Prawo administracyjne*, Warszawa 1977, pp. 55–56 and J. Starościak, E. Iserzon, *Prawo administracyjne*, Warszawa 1963, p. 47.

tive authority should be seen as a special form of state authority[11], whose essence is to authorize the administrative body to unilaterally shape the legal situation of the administered entity by issuing legal acts and using coercion to enforce them[12].

One should also point to the view presented by E. Ur, coercion must be legal, which results from the rule of law, which is of a systemic nature. The author aptly states that one of the consequences of imperious administration is the possibility of using administrative coercion. The element of coercion occurs only in decisions imposing obligations. However, it does not occur in the case of decisions granting only rights[13].

In the case of public administration, public administration bodies may themselves (without the interference of the courts) use coercion to carry out their orders. In this situation, coercion can be twofold: direct or indirect. As E. Ochendowski rightly observes, public administration has a measure that is not entitled to other types of administration - the possibility of using direct coercion, which is the result of the state's monopoly of using physical force and the ability to use power[14].

Undoubtedly, the above views indicate that in a democratic state ruled by law, administrative authority is not a natural feature of public administration bodies, resulting from the essence of administration. (…) it is the legislator who, while deciding to separate the executive power in the state, equips it with power to some extent[15].

The literature on the subject distinguishes three contexts of public authority: as an attribute of some legal forms of administration; as part of the definition of the concept of a public administration body; in the context of considerations on the concept of administrative relationship[16].

The activities of the Police as a specialized administration body are of a special nature. This formation is entitled to use legal forms with some distinctive specificity only for the operation of these bodies, using legal means only granted to them. This is due to the concentration of tasks related to the protection of security and legal order, performed in specific situations in the event of a road collision, terrorist attack, riots on the streets, stadium brawls, etc.[17] There are many tasks and the Police use imperious forms of action. They can be divided into two spheres of activity: internal and external. The first one is addressed to public

[11] As cited in: K. Chochowski, *Istota władztwa administracyjnego (imperium) jako szczególnej postaci władztwa państwowego* [in:] *Władztwo administracyjne. Administracja publiczna w sferze imperium i w sferze dominium*, ed. J. Łukasiwicz, Rzeszów 2012, p. 106

[12] More: M. Wierzbowski, *Prawo administracyjne*, Warszawa 2006, p. 124 n.

[13] E. Ura, *Prawo administracyjne*, p. 110.

[14] E. Ochendowski, *Prawo administracyjne*, Toruń 1999, p. 24 n., as cited in: K. Chochowski, *Istota władztwa*…, p. 108.

[15] As cited in: L. Bielecki, *Władztwo administracyjne*…, p. 32.

[16] Z. Pulka, *Władztwo administracyjne*…, p. 137.

[17] Check also: E. Ura, *Prawo administracyjne*, p. 111 n.

administration bodies remaining in the structure of personnel dependency and service dependence. The second one is addressed to entities remaining outside the structure of the administrative apparatus.

Due to the diverse nature of the tasks carried out by the Police, as well as the nature of the goods and states protected by it, most often this militarized formation uses imperious forms as well as non-imperious activities as an independent or supporting forms of their operation.

A common catalog of legal forms of administration activities that come down to the external sphere is given by S. Starościak, who divides them into six groups of legal forms of administration activities: establishing general regulations, issuing administrative acts, concluding administrative arrangements, concluding contracts, conducting social and organizing activities, performing material and technical activities[18].

Classification of legal forms of administrative police activities[19] was made by J. Gierszewski, who pointed to: order regulations, general administrative act of a police nature, police orders, police permits, police coercion, police penalties[20].

Order regulations are general acts and their primary task is to protect public security and order. They are issued on the basis of a general authorization contained in the following acts: on a voivode and government administration in a voivodship – the authority authorized to enact order regulations is the voivode who issues ordinances[21]; on poviat self-government – poviat councils which issue ordinances in the form of resolutions[22]; on communal self-government – commune councils which also issue ordinances in the form of resolutions[23]. They are issued to protect such goods as life, health, public safety and environmental protection. Order regulations come into force on the day of announcement, however they are announced in a special mode. Importantly, they can be issued only to the extent not regulated in separate laws or other generally applicable provisions. Order regulations may provide for a fine imposed in breach of the procedure and on the principles provided for in the offenses law[24].

The administrative act is an imperious unilateral declaration of intent by the body performing public administration tasks, based on the provisions of adminis-

[18] S. Starościak, *Prawo administracyjne*, Warszawa 1977, p. 231.

[19] Including the Police – added by the author of the text.

[20] J. Gierszewski, *Wyodrębnienie policji spośród innych władczych funkcji administracji publicznej*, „Zeszyty Naukowe WSAiB im. E. Kwiatkowskiego w Gdyni" 2011, No. 17, Prawo 2, p. 136 n.

[21] The Act of 23 January 2009 (Dz.U. 2019, Item 1464).

[22] The Act of 5 June 1998 (Dz.U. 2019, Item 511).

[23] The Act of 8 March 1990 (Dz.U. 2019, Item 506).

[24] H. Walczak, *Władcze formy działania policji administracyjnej* [in:] *Władztwo administracyjne. Administracja publiczna w sferze imperium i w sferze dominium*, ed. J. Łukasiewicz, Rzeszów 2012, p. 712 n.

trative law, specifying in a legally binding manner the situation of a specifically designated addressee in an individually marked case[25].

A general administrative act of a police nature is a form of a general administrative act that defines in its content bans and orders addressed to a generally specified addressee. It is used in particular in existing situations or potential threats to security or property. Very often in its content contains orders or prohibitions of specific behavior that are addressed to a generally specific addressee. What should be emphasized is that this act does not regulate the legal status of addressees, but refers to the actual act or omission depending on the content and circumstances in which it is issued[26].

The specifics of the activity of the state administration that works in various areas (for example, security and public order) very often requires effective and immediate solutions in urgent situations. An administrative decision taking into account the specificity of actions in the field of security and public order is a direct decision. It refers to issuing permits, prohibitions, orders for specific behavior of an individually indicated addressee in a given situation. To give it legal force, it is necessary to communicate its content in an understandable and clear way to the addressee[27]. An example of a direct resolution in the activities of the Police is the use of orders and prohibitions in driving traffic by policemen. The legal basis for these decisions is provided by the provisions of the Road Traffic Act[28], but it should be noted that the doctrine includes terms treating traffic signs and signals as general administrative ordinances that serve to protect public safety and order[29].

In the sphere of order administration (including the Police), apart from individual orders and bans, police acts of a general nature (erga omnes) play a significant role in maintaining public order. administrative ordinances[30]. An example of such an ordinance may be an order for the immediate departure of those gathered upon dissolution of the public assembly, as well as the powers of law enforcement services (including the Police) of the mass event organizer, which involves issuing binding order orders to persons who disturb public safety and order or do not comply with the regulations. event.

The police order is also an administrative act of an individual nature addressed to individually specified persons, the purpose of which is to enforce specific behavior. A police order may take the form of an order or prohibition of specific conduct. The order obliges the addressee to take specific actions – e.g. an

[25] More: E. Ura, *Prawo administracyjne*, p. 113 n.

[26] H. Walczak, *Władcze formy*…, p. 714.

[27] E. Ura, *Prawo administracyjne*, p. 119.

[28] The Act of 20 June 1997 (Dz.U. 2018, Item 1990).

[29] B. Jaworski, *Policja administracyjna*…, p. 118.

[30] More: H. Izdebski, M. Kulesza, *Administracja publiczna. Zagadnienia ogólne*, Warszawa 2004, p. 105 n.

order to leave a parking space which is intended only for disabled people. In turn, the ban obligates to passive behavior – e.g. a ban on entering streets excluded from traffic due to public assembly. At the same time, it should be emphasized that if such a command is aimed at removing an immediate threat, it is subject to immediate execution[31].

Acts of internal management or legal acts play a special role here, regulating the behavior of recipients located within the organizational structure of public administration – subordinates subordinate to business and organization. Acts apply only to those units which are subordinate to the authority issuing those acts. They cannot directly regulate the sphere of rights and obligations of citizens, they cannot form the basis for decisions against natural and legal persons. A special type of internal management act in the Police is an official order.

M. Kulesza includes internal management files as forms of administrative activity and indicates that "dozens of different organs and institutions of public administration simply have to establish administrative regulations of universal application, because without them collective life cannot function well, and public administration cannot perform its tasks. These are various types of regulations, not only executive but also administrative, «legal acts» issued on the basis of a competence-type authorization, e.g. statutes"[32]. An example of an internal law act regarding the Police is Order No. 1041 of the Police Commander-in-Chief of 28 September 2007 regarding detailed rules for the organization and scope of operation of police commands, commissariats and other organizational units of the Police"[33].

The legal regulations have assigned the Police authorities a wide catalog of tasks in various spheres of social life. Their implementation is supported by legal methods of action called legal forms of administration. Administrative law doctrine distinguishes several views on the classification of legal forms of administration[34]. Their most general distinction is the division into forms taking place in the sphere of internal and external relations of the administration. The basic criterion that makes it possible to distinguish internal activities is the organizational structure in which they occur. This can be explained by the fact that they

[31] For more on the police order: H. Walczak, *Władcze formy*…, p. 715 and B. Jaworski, *Policja administracyjna*…, p. 117 n.

[32] M. Kulesza, *„Źródła prawa" i przepisy administracyjne w świetle nowej Konstytucji*, „Państwo i Prawo" 1998, No. 2(624), p. 14 n.

[33] Announcement of the Police Commander-in-Chief of 25 June 2013 regarding the announcement of a uniform text of the ordinance of the Police Commander-in-Chief regarding the detailed rules for the organization and scope of operation of police commands, police stations and other organizational units (Dz.Urz. KGP 2013, Item 50).

[34] More: M. Wierzbowski, A. Wiktorowska, *Prawne formy działania administracji* [in:] *Prawo administracyjne*, ed. M. Wierzbowski, Warszawa 2008, p. 277; K. Ziemski, *Indywidualny akt administracyjny jako forma działania administracji*, Poznań 2005, p. 166.

occur in a hierarchical subordination system, as well as in the internal administrative relations of the authority. There is a typical hierarchical subordination in the functioning of the Police authorities, internal activities play a very important role here. Their multi-faceted nature means that in many cases they may result in certain indirect consequences, also for the addressee who is outside the organizational structures of the police apparatus. Police authorities issue normative acts in the internal sphere. They are mainly directed to subordinate organizational units. It should be noted that in many cases they also indirectly affect the situation of citizens. An example here may be the norms regulating the way of conducting compliance with the law on traffic on public roads[35].

The rule of distinguishing internal forms of activity is the organizational structure in which these forms occur and the addressee remaining within the given organizational structure. They clearly take place in a hierarchical system of subordination and shape the relationship between various organs of a given degree or within the structure of a given organizational unit. In the light of the above, it seems obvious that the legal forms of internal action within the Police in the form of a normative act will be acts of internal management, which include orders, instructions and guidelines belonging to the category of normative acts issued on the basis of a general competence norm resulting from managerial functions. Internal acts include opinions and information provided to bodies. These acts may be internal and individual (e.g. official opinion) or external. The first one gives rise to important effects for the person being reviewed, an example can be the opinion (information) about the suitability or inadequacy for service in a position held in the Police[36].

Acts of internal management regulate the behavior of addressees located within the organizational structure of public administration, subordinate service and organizational subordinates[37].

The police permit is a category of constitutive administrative act. It is included in a wide group of administrative permits. The police permit belongs to the group of administrative permits, which repeal the statutory ban on developing certain activities[38]. The revocation of the prohibition under a police permit is a manifestation of a certain freedom, but it is not mandatory, which means that if you cease to fulfill certain guarantees, it may be withdrawn by an authorized body[39]. As H. Walczak rightly observes, statutory bans on performing specific activities are introduced due to the threat to public interest. The entities to which

[35] S. Pawłucha, *Zagadnienia prawne organizacji i funkcjonowania Policji*, Szczytno 1995, p. 31 and n.

[36] *Ibidem*, p. 38 n.

[37] E. Bojanowski, K. Żukowski, *Leksykon prawa administracyjnego*, Warszawa 2009, p. 12.

[38] More: M. Żukowski, *Pojęci, cechy oraz zakres policji administracyjnej*, „Zeszyty Naukowe Politechniki Rzeszowskiej" 2010, No. 272, p. 217 n.

[39] As cited in: B. Jaworski, *Policja administracyjna*…, p. 116.

these permits are granted give guarantees by possessing appropriate qualifications[40]. The main purpose of a police permit is to maintain public safety and order, which is also a feature that distinguishes this legal form from other administrative permits. An example of a police permit in the sphere of police activity is the issue of a weapon permit decision, which is issued in the form of an individual administrative act by the provincial police commander.

Police coercion, so-called immediate coercion is a category of state coercion which has no signs of enforcement coercion. It means the possibility of using the measures necessary to force compliance with the decisions of state administration bodies aimed at effective implementation of the tasks and competences entrusted to them[41].

The police are a tool of the executive branch that has the right to apply coercion to citizens to fulfill their tasks. Direct coercion is an imperative form of administration that is used only by statutory police authorities. It is a type of actual activity consisting in causing specific behavior by its addressee in the course of activities performed by the Police authorities. Direct coercion measures may be used or used, in accordance with the Act on direct coercion measures and firearms[42], through the sub-unit compact. Consent to the use or use of direct coercion measures by a compact unit in the case of the Police is given by the Police Commander-in-Chief, the voivodship (capitalist) commander competent for it or persons authorized by them. Permission for the use or use of direct coercion measures by a compact unit may also be given by its commander, if a delay in the use or use of these means would threaten a direct danger to the life or health of the entitled person, another person or property or an attack on important objects, devices or areas.

Decisions on the use or use of means of direct coercion such as: physical strength, straitjacket, stalling, water staging, chemical staging are taken by the head of the Police organizational unit or persons authorized by him, and in their absence – by the duty officer.

As can be seen from the nature of direct coercion measures, their use or use is associated with interference in the sphere of constitutionally guaranteed rights and freedoms[43]. The action of using coercion should be undertaken with caution, without exceeding its limits and providing the unit with adequate protection against excessive ailments related to the use of coercion[44].

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[40] H. Walczak, *Władcze formy*…, p. 715.

[41] W. Lis, *Policja administracyjna jako funkcja administracji publicznej* [in:] *Problemy publicznoprawne i ekonomiczne*, ed. I. Ramus, Kielce 2014, p. 96 n.

[42] Dz.U. 2018, Item 1834.

[43] W. Lis, *Stosowanie przez policje środków przymusu bezpośredniego a ochrona wolności i praw człowieka* [in:] *Nauki społeczne na rzecz bezpieczeństwa wewnętrznego*, eds. P. Bogdalski, M. Napelski, Szczytno 2014, p. 225.

[44] J. Radwanowicz, *Metoda przymusu administracyjnego* [in:] *Nauka administracji wobec wyzwań współczesnego państwa prawa*, ed. J. Łukasiewicz, Rzeszów–Cisna 2002, p. 460.

The protection of individual rights is of great importance, however, in some situations these rights are subject to restrictions, and the Police using force can resort to a measure referred to in the literature as a police penalty[45].

Police penalties are a group of administrative penalties because they are intended to safeguard public order. Most often these are fines imposed in the form of a criminal mandate in a situation where the legislator classifies certain behavior prejudicial to public safety and order. The legal basis for police penalties is given by, among others Act of 20 May 1971, the Code of Offenses[46]. An example here may be criminal fines for selected types of offenses[47] imposed by police officers, for example for non-compliance with traffic laws[48].

The administration is imperious, so it may use state coercion, which is administrative power with administrative and legal sanctions, the main assumption of which is to cause negative consequences for persons who violate norms consisting in a specific prohibition or order.

An administrative arrangement is a legal form of non-governmental administration. Its basic element is cooperation of entities. This is a legal act carried out by entities performing public administration tasks. The agreement may be concluded between two or more entities and all entities of administrative law may be parties of this agreement.

The administrative agreement is indicated by the Act on the Police of 6 April 1990, which provides for the possibility of concluding an agreement between the head of the commune and the appropriate poviat (municipal) police commander on the transfer of funds to the Police from the own revenues of local government units for rewards for achievements in the service of policemen who carry out tasks in preventive service.

It is also possible to conclude an agreement on increasing the number of Police posts in districts or posts and in the poviat or commune. Similarly, by concluding an agreement with the commune head, cooperation with commune guards is implemented. Detailed forms and methods of cooperation of territorially competent Police and guard units are specified in the agreement concluded between the territorially competent police commander and the commune head, mayor (city president).

A civil law contract is a form of activity of at least two independent parties and comes into effect as a result of a joint declaration of intent of these parties[49].

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[45] B. Jaworski, *Policja administracyjna*…, p. 122.

[46] Dz.U. 2019, Item 821.

[47] The amount of penalties is regulated by the Regulation of the Prime Minister of 24 November 2003 on the amount of fines imposed by way of criminal fines for selected types of offenses (Dz.U. 2013, Item 1624).

[48] The Act of 20 June 1997 – Traffic Law (Dz.U. 2018, Item 1990).

[49] H. Knysiak-Molczyk, *Umowa cywilnoprawna jako forma działania organów administracji publicznej* [in:] *Koncepcja systemu prawa administracyjnego*, ed. J. Zimmerman, Kraków 2007, p. 493.

Administrative activities (including the Police) through civil law contracts are usually associated with the sphere of property relations. An example would be the signing of a contract by the provincial police commander for the provision of moving (towing) business vehicles in the event of a breakdown by a commercial entity. Many civil law contracts are concluded as a consequence of material and technical activities.

It should be noted that both civil law and public law contracts do not serve the basic functions carried out by the Police.

The literature on the subject emphasizes that legal acts give rise to a certain standard of conduct, while factual acts can shape legal relationships through facts, not rules of conduct[50].

Among the actual activities, there are social and organizational activities as well as material and technical activities.

Social and organizational activities are a non-controlling form of administration and can be taken alongside other forms of administration to deepen the impact of administration or as the primary and only form.

Article 1(2) of the Act on the Police, provides that the basic tasks of this formation include: protection of life, health and property against unlawful attacks that violate these goods; protection of public safety and order, including ensuring peace in public places and means of public transport and public communication as well as initiating and organizing activities aimed at preventing committing crimes and offenses as well as criminogenic phenomena and cooperating in this respect with state authorities. Therefore, it should be stated that these activities can be carried out through social and organizational activities.

It should be emphasized that the legislator left the application of this form and its scope to the recognition and experience of the Police authorities. The use of this form may include, among others organizing meetings with the public on a large scale, organizing meetings with the inhabitants of a given city, lectures or readings on the sphere of security and public order. All kinds of actions organized by the Police to strengthen security, an example of this is the nationwide "Say NO" campaign, in which the Police in Poland are also involved. The action concerns counteracting and combating blackmail and sexual extortion in the virtual sphere committed against children and young people[51].

Material and technical activities are defined as activities of administrative bodies which have their legal basis and cause specific legal effects. The material and technical activities also include a group of tasks carried out by the Police, namely: stopping the driver for control, tapping, on duty, escort service or checking correspondence.

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[50] E. Ura, *Prawo administracyjne*, p. 137.

[51] Compare: E. Kubas, *Czynności faktyczne funkcjonowania Policji* [in:] *Policja. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019, p. 122.

A characteristic feature of material and technical activities is that that they produce certain legal effects by facts and not by creating norms of the legal order. Their attribute is also the fact that citizens must comply with them. The direct legal basis for actions concerning a citizen may be a valid administrative act or a provision of generally applicable law[52].

The literature presents the view that the legal forms of administrative activity include the inaction of the administration.

J. Zimmerman, writing about legal forms and methods of action, states that if an administrative body does not operate in a situation where the facts and legal norms require it, it does not fulfill the obligation imposed on it. If he does not do so without statutory authorization, the phenomenon of inaction occurs. However, there are also such situations that the act provides for passive behavior of the administrative body and then one can speak of the silence of the body[53].

Through silence, the administrative body expresses its will. An example of such a norm will be the regulations contained in the Act on the Police[54], acting in Art. 6b (and also 6c, 6d)[55], that the provincial Police Commander is appointed and dismissed by the minister competent for internal affairs at the request of the Chief Police Commander submitted after consulting the voivode. If no opinion is received, the minister may appoint a voivodship commander after 14 days from the day of submitting the request for an opinion.

The provision of Art. 6b of the Act on the Police provides that you may be removed from office at any time. However, in the absence of an opinion, the authority authorized to appoint a commandant may dismiss the provincial commandant accordingly. The above regulation clearly shows that the body authorized to appoint that position may dismiss the position in question at any time. The lack of specific criteria justifying the appeal means that the launch of the procedure specified in the abovementioned article of the act, it was left to the discretion of the competent public administration body, which may at any time dismiss a person from the managerial position of the unit, provided that the premises justifying the appointment have ceased[56].

P. Chmielnicki notes that the presented regulation raises the question of whether a necessary solution is to include representatives of public administration bodies in the appointment of commanders of individual Police units. It can be assumed that in light of the principles of legalism and prosecution ex officio and equality before the law, the need to ensure influence on the work of the Police on the part of the executive, and especially local government bodies, is disputable. The adopted solution

[52] More: E. Ura, *Prawo administracyjne*, p. 139 n.

[53] J. Zimmerman, *Prawo administracyjne*, Kraków 2012, p. 420.

[54] Dz.U. 2020, Item 360.

[55] Art. 6c – appointment and dismissal of the poviat police commander and district police commander, Art. 6d – appointment and dismissal of the police station commander.

[56] More: IV SA/Po 886/09 – Judgment of the Provincial Administrative Court in Poznań, Lex nr 606880.

leads to a situation in which the criterion of professionalism in filling management positions in law enforcement bodies gives way to the influence of a political factor[57].

In the study, the author presents, in a synthetic way, the problem of legal forms of activity in the Police. Legal forms of police activity are actual activities specified in specific legal provisions which the authority uses to perform specific tasks. Generally, in certain situations, the Police have the option of choosing the form of action that will be most appropriate under certain conditions.

Undoubtedly, these activities condition an important element of the existence and functioning of this uniformed and armed formation to guard public security and order. The presented forms of police activity strictly determine the methods of action, which can be described as the style of dealing with a particular type of case.

Bibliography

Bielecki L., *Władztwo administracyjne* [in:] *Prawo administracyjne*, eds. M. Zdyb, J. Stelmasiak, Warszawa 2016.

Bielecki L., *Władztwo administracyjne jako istotna cecha definicji administracji publicznej* [in:] *O prawie administracyjnym i administracji. Refleksje*, eds. B. Jaworska-Dębska, Z. Duniewska, M. Kasiński, E. Olejniczak-Szałowska, R. Michalska-Biedziak, P. Korzeniowski, Łódź 2017.

Bigo T., *Stanowisko związków publicznoprawnych w polskim systemie administracyjnym*, Lwów 1928.

Bojanowski E., Żukowski K., *Leksykon prawa administracyjnego*, Warszawa 2009.

Chochowski K., *Istota władztwa administracyjnego (imperium) jako szczególnej postaci władztwa państwowego* [in:] *Władztwo administracyjne. Administracja publiczna w sferze imperium i w sferze dominium*, ed. J. Łukasiewicz, Rzeszów 2012.

Gierszewski J., *Wyodrębnienie policji spośród innych władczych funkcji administracji publicznej*, „Zeszyty Naukowe WSAiB im. E. Kwiatkowskiego w Gdyni" 2011, No. 17, Prawo 2.

Izdebski H., Kulesza M., *Administracja publiczna. Zagadnienia ogólne*, Warszawa 2004.

Jaroszyński M., Zimmermann M., Brzeziński W., *Polskie prawo administracyjne. Część ogólna*, Warszawa 1956.

Jaworski B., *Policja administracyjna*, Toruń 2019.

Jellinek G., *Allgemeine Staatslehre*, Bad Homburg 1959.

Knysiak-Molczyk H., *Umowa cywilnoprawna jako forma działania organów administracji publicznej* [in:] *Koncepcja systemu prawa administracyjnego*, ed. J. Zimmerman, Kraków 2007.

Kubas E., *Czynności faktyczne funkcjonowania Policji* [in:] *Policja. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019.

Kulesza M., *„Źródła prawa" i przepisy administracyjne w świetle nowej Konstytucji*, „Państwo i Prawo" 1998, No. 2(624).

Lis W., *Policja administracyjna jako funkcja administracji publicznej* [in:] *Problemy publicznoprawne i ekonomiczne*, ed. I. Ramus, Kielce 2014.

Lis W., *Stosowanie przez policje środków przymusu bezpośredniego a ochrona wolności i praw człowieka* [in:] *Nauki społeczne na rzecz bezpieczeństwa wewnętrznego*, eds. P. Bogdalski, M. Napelski, Szczytno 2014.

Ochendowski E., *Prawo administracyjne*, Toruń 1999.

[57] P. Hofmański, Z. Kwiatkowski [in:] *System Prawa Karnego Procesowego*, Vol. V: *Sądy i inne organy postepowania karnego*, WK 2015, Lex.

Pawłucha S., *Zagadnienia prawne organizacji i funkcjonowania Policji*, Szczytno 1995.
Pulka Z., *Władztwo administracyjne jako szczególna postać władzy państwowej*, „Acta Universitatis Wratislaviensis" 1992, No. 1313.
Radwanowicz J., *Metoda przymusu administracyjnego* [in:] *Nauka administracji wobec wyzwań współczesnego państwa prawa*, ed. J. Łukasiewicz, Rzeszów–Cisna 2002.
Radziewicz P., *Administracyjnoprawne pojęcie władztwa publicznego*, „Kwartalnik Prawa Publicznego" 2005, No. 4.
Służewski J., Bujko O., Sobczak K., *Polskie prawo administracyjne*, Warszawa 1961.
Starościak J., *Prawo administracyjne*, Warszawa 1977.
Starościak J., Iserzon E., *Prawo administracyjne*, Warszawa 1963.
Ura E., *Prawo administracyjne*, Warszawa 2015.
Walczak H., *Władcze formy działania policji administracyjnej* [in:] *Władztwo administracyjne. Administracja publiczna w sferze imperium i w sferze dominium*, ed. J. Łukasiewicz, Rzeszów 2012.
Wierzbowski M., *Prawo administracyjne*, Warszawa 2006.
Wierzbowski M., Wiktorowska A., *Prawne formy działania administracji* [in:] *Prawo administracyjne*, ed. M. Wierzbowski, Warszawa 2008.
Ziemski K.M., *Podstawy problematyki* [in:] *System Prawa Administracyjnego*, Vol. V: *Prawne formy działania administracji*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2013.
Zimmerman J., *Prawo administracyjne*, Kraków 2012.
Ziemski K., *Indywidualny akt administracyjny jako forma działania administracji*, Poznań 2005.
Żukowski M., *Pojęci, cechy oraz zakres policji administracyjnej*, „Zeszyty Naukowe Politechniki Rzeszowskiej" 2010, No. 272.

Summary

The Police are a uniformed and armed formation serving society and created to protect human safety and to maintain security and public order. Therefore, it carries out a number of tasks that take various forms of action. The author of the text carries out an in-depth exegesis and analysis of the legal forms of action highlighted by literature and proves that in the activities of the Police, there are legal forms of action which are an important element of the existence and functioning of this uniformed and armed formation to uphold security and public order.

Keywords: Police, legal forms of action

PRAWNE FORMY DZIAŁANIA W POLICJI

Streszczenie

Policja jest umundurowaną i uzbrojoną formację służącą społeczeństwu i przeznaczoną do ochrony bezpieczeństwa ludzi oraz do utrzymywania bezpieczeństwa i porządku publicznego. W związku z tym realizuje szereg zadań, które przyjmują różne formy działania. Autor tekstu dokonuje dogłębnej egzegezy i analizy prawnych form działania wyróżnionych przez literaturę przedmiotu i udowadnia, że w działalności Policji istnieją prawne formy działania które stanowią ważny element istnienia, a zarazem funkcjonowania tej umundurowanej i uzbrojonej formacji mającej stać na straży bezpieczeństwa i porządku publicznego.

Słowa kluczowe: Policja, prawne formy działania

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MEDIATOR AND THEIR ROLE IN COLLECTIVE DISPUTES

Interpersonal relations, not only in the social but also legal terms, carry the risk of many conflicts. In the related literature the concept of conflict is defined as a set of behaviours of two social entities directed against each other, where each party pursues their own goals[1]. There are separate stages of conflict evolution, which include: emergence of the conflict, manifestation of the parties' opposing behaviours, escalation of the conflict, subjecting the conflict to observation by the environment, initiating the process of dispute resolution or dispute settlement, and finally, possible resolution or settlement of the dispute. According to this typology, the conflict revealed and subjected to observation by the environment turns into a dispute, which is one of the variations of the conflict[2]. Hence, it can be concluded that a conflict which is not disclosed to the environment, is not subjected to its assessment and does not affect the environment, i.e. has no social effects, will not be perceived as a dispute. According to another typology, four stages of conflict can be distinguished: a preceding situation, a provocation period, an escalation period and a confrontation phase[3]. From the point of view of collective disputes, the first typology of conflicts, where a dispute arises when the conflict is manifested, seems to be more appropriate and graphic. This moment will be reflected by communication of requests formulated by the trade union, and addressed to the employer, if they are not rejected by the latter. Approval of the claims, in the light of the provisions of the Act on solving collective disputes, will mean that the dispute has not started[4]. Submission of requests will

[1] See: A. Korybski, *Alternatywne rozwiązywanie sporów w USA. Studium teoretycznoprawne*, Lublin 1993, p. 352.

[2] *Ibidem*, p. 23.

[3] A. Hankała, *Konflikty międzyludzkie* [in:] *Wielka encyklopedia prawa*, ed. E. Smoktunowicz, Białystok–Warszawa 2000, p. 364.

[4] Art. 7, paragraph 1 of the Act of 23 May 1991 (Dz.U. No. 55, Item 236 as amended).

also be a manifestation of instrumental use of measures, based on dispute resolution methods provided by the legislator, since the moment the dispute starts is treated as the beginning of negotiations[5].

In sociological terms, all kinds of conflicts are treated as natural phenomena that have accompanied the development of civilization since its dawn[6]. Therefore, conflicts are nothing new in collective labour law, however in this case they most often change into disputes which are resolved based on statutory methods, i.e. the conflict turns into a legal dispute[7]. The Polish act on solving collective disputes introduces regulations whose characteristic feature is the fact that disputes may be settled by the parties themselves, without participation of state institutions. The related methods include mediation, during which the mediator helps the parties to resolve the disputes. In accordance with international standards, Polish law introduces peaceful methods of resolving collective disputes, including the least formal method of negotiations, moderately formalized mediation, and the most formal method of arbitration. Since, essentially, mediation involves settlement of the dispute by the parties but with the participation of a third party, it is obvious that the mediator's role is not to resolve the dispute. The Act on solving collective disputes does not specifically describe the role of the mediator, their competences or methods of mediation[8]. It merely indicates that they have the competence to notify the parties about the arrangements made (Art. 13, clause 1), to propose an expert opinion on the employer's economic and financial standing (Art. 13, clause 2), and to make a request to the trade union regarding postponement of the strike (Art. 13, clause 3). In connection with the above, the doctrine of collective labour law distinguishes three groups of mediator's competences, i.e. related to investigation and analyses, organization and formulation of postulates. The first group includes competences related to acquisition of evidence necessary to carry out specific activities, i.e. collecting information, review of documents, or hearings of the parties' representatives. The second group of mediator's competences comprises activities related to organisation of meetings for the parties. Finally, the third group is related to the mediator's right to put forth requests in order to draw the parties' attention to the need for additional or detailed decisions, or for expert opinions (the so-called postulate rights)[9].

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[5] K.W. Baran, *Komentarz do art. 8 ustawy o rozwiązywaniu sporów zbiorowych*, www.lex.edu.pl; J. Łukaszewicz, *Aksjologiczne i prakseologiczne przesłanki polubownego rozstrzygania sporów i mediacji* [in:] *Sądy polubowne i mediacja*, ed. J. Olszewski, Warszawa 2008, p. 6.

[6] See: R Dahrendorf, *Teoria konfliktu w społeczeństwie przemysłowym* [in:] *Elementy teorii socjologicznych*, Warszawa 1975, p. 433

[7] See: A. Gryniuk, *Przymus prawny jako środek rozwiązywania konfliktów społecznych w dużych i wielkich grupach społecznych*, Toruń 1990, p. 51.

[8] J. Żołyński, *Ustawa o rozwiązywaniu sporów zbiorowych. Komentarz. Wzory pism*, Warszawa 2012, Lex.

[9] See: W. Masewicz, *Zatarg zbiorowy pracy*, Bydgoszcz 1994, p. 137.

The above classification is undoubtedly based on statutory regulations, but it does not provide a clear-cut answer to the question about the role of the mediator in collective labour disputes. The mediator's powers related to investigation and analyses, in terms of the subject matter, comprise their statutory competence to determine whether or not the resolution of a collective dispute requires additional and detailed decisions, and subsequently to notify the parties of this fact. If the mediator is to come to the above conclusions, they must gather and then analyse information which will undoubtedly come from the parties to the collective dispute. In turn, postulative rights are equivalent to the statutory competences for notifying the parties about a need for expert opinions regarding the employer's economic situation. It should be noted, however, that in order to reach the above conclusion the mediator must first investigate whether such expert opinion is necessary, hence this competence also reflects their powers related to investigation and analyses. In practice, this classification may turn out to be blurry.

The mediator's competences set forth in the Act do not exhaust all manifestations of the rights constituting the above-mentioned groups. Some of these rights result from the essence of mediation. This unquestionably includes the power to organize meetings of the parties or setting the date and place of these meetings. However, appointment of the mediator to chair the parties' meetings and to manage the course of these meetings, as agreed by the parties, may raise doubts. Since those involved in the dispute are the parties to the conflict, and nothing is changed by the fact that the third-party mediator is present, the parties conduct discussions during which they present their positions. It does not seem necessary for the mediator to chair such meetings merely to ensure order[10]. It would be too big of a simplification of the mediator's role. However, in order to try to clarify this role, one should consider what the essence of mediation is.

Mediation is one of the alternative methods of resolving collective disputes, referred to as ADR (Alternative Dispute Resolution)[11]. Common features of these methods include: involvement of an impartial third party with no competences in the dispute resolution, lack of full formalism, the parties' direct involvement and their cooperation. According to the objectives of ADR methods, the parties should focus on a conflict resolution, rather than on competition[12]. Such method is sometimes defined as a technique for resolving conflicts, a forum where all parties to the conflict are helped to find a satisfactory solution[13].

Mediation, as an alternative form of dispute resolution, was already known in ancient times. Today it is assumed that a pioneering role in this area was played by the United States of America, where in the 1970s and 1980s alterna-

[10] On the contrary: *ibidem*, p. 137.

[11] In addition to mediation, ADR methods also include conciliation and arbitration.

[12] See: E. Gmurzyńska, R. Morek, *Mediacja teoria i praktyka*, Warszawa 2009, p. 21.

[13] A. Nocuń, J. Szmagalski, *Podstawowe umiejętności w pracy socjalnej i ich kształtowanie. Porozumiewanie się, rozwiązywanie problemów i konfliktów*, Katowice–Kraków 1998, p. 143.

tive methods of conflict resolution emerged[14]. In the related literature it is defined as "a structured process in which an impartial mediator facilitates communication between those involved in the dispute, to enable them to better understand each other and achieve solutions acceptable to both parties"[15]. Mediation as an alternative method of resolving collective disputes, by its essence, requires involvement of a third party in the process, but the mediator is to act as an intermediary "in the communication between the parties, to facilitate agreement reached by them, while trying to eliminate differences between the parties through rational persuasion"; however a mediator may not say that either party is right[16]. Their task is therefore to propose solutions rather than resolve the dispute, because they do not act as an arbitrator. However, the question arises whether the mediator's role is passive, basically resembling the role of an observer having no right to suggest solutions, or whether it is an active role. This is a problem related not only to collective labour law, where there are no regulations specifying the role of a mediator, but also in the case of other branches of law where amicable dispute resolution methods are in place.

The controversy related to the mediator's essential competences is reflected e.g. by the question whether or not conciliators and mediators are equally involved. In the related doctrine there are a few different model opinions regarding the above issues. According to one approach, conciliation is defined as a separate alternative method enabling dispute settlement where a third party, assisting those involved in the dispute, proposes a solution; this is in contrast to the role of a mediator who can only facilitate dialogue, motivating the parties to independently conclude the dispute[17]. According to this approach, a conciliator concentrates on reaching a settlement, while a mediator focuses on stimulating proper communication between the parties[18]. A conciliator formulates the resolution of the dispute on their own, whereas a mediator does it jointly with the parties[19].

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[14] Cf. E. Gmurzyńska, *Mediacja w sprawach cywilnych w amerykańskim systemie prawnym – zastosowanie w Europie i w Polsce*, Warszawa 2006, p. 1; A. Bieliński, *Uwagi wstępne na temat mediacji* [in:] *Sądy polubowne i mediacja*, ed. J. Olszewski, Warszawa 2008, p. 37. In the literature you can also find the claim that the ARD (Alternative Dispute Resolution) movement was born in Great Britain, from where it was transferred to the United States of America. See: A. Kalisz, A. Zienkiewicz, *Mediacja sądowa i pozasądowa. Zarys wykładu*, Warszawa 2009, p.26.

[15] N. Doherty, M. Guyler, *Mediacja i rozwiązywanie konfliktów w pracy*, Warszawa 2010, p. 19.

[16] A. Kalisz, A. Zienkiewicz, *Mediacja sądowa*…, p.33.

[17] See: A. Wach, *Delimitacja mediacji i koncyliacji jako samodzielnych form ADR*, „Radca Prawny" 2003, No. 1, p. 96 n.; *idem*, *Alternatywne formy rozwiązywania sporów sportowych*, Warszawa 2005, p. 217; L. Bouelle, *Australian ADR and the Issue of Judicial Discretion* [in:] *ADR International Applications, International Court of Arbitration Bulletin Special Supplement*, Paris 2001, p. 41, based on: R. Morek, *Razem czy osobno: uwagi o znaczeniach pojęć mediacji i koncyliacji* [in:] *Sądy polubowne i mediacja*, ed. J. Olszewski, Warszawa 2008, p. 24.

[18] J.W.S. Davis, *Dispute Resolution in Japan*, Cambridge, Mass. 1996, p. 152, after: R. Morek, *Razem czy osobno*…, p. 23.

[19] See: R. Bierzanek, J. Simonides, *Prawo międzynarodowe*, Warszawa 1997, p. 334.

There are also comments in the literature suggesting that the above distinction of mediation and conciliation refers to the historical model of mediation, since the concept functioning today is broader[20]. According to this approach, conciliation is not a separate alternative method of resolving disputes, because modern mediation can take various forms, such as evaluative mediation. The only criterion for distinguishing conciliation cannot be based on the degree of involvement of these two entities, if other characteristic features such as voluntary accession and reaching an agreement, conciliatory environment and autonomy of the parties are similar. Therefore, these concepts can be treated as equivalent[21].

According to another trend, conciliation and mediation are not identical concepts, and they can be distinguished based on the degree of the third party's involvement. However, it is the mediator, not the conciliator, who is more active and can propose their own solutions to the dispute. The conciliator, on the other hand, helps the parties to reach an agreement by encouraging them to continue meetings and discuss contentious issues, and by encouraging them to compromise[22]. A similar understanding of the concepts of conciliation and mediation was adopted in the draft recommendation of the Committee of Ministers of the Council of Europe (Recommendation No. (2001) 9 of 2001)[23].

Conciliation and mediation are separate concepts in some European countries, where, unlike in Poland, there are legal grounds for doing so. Belgium, France or Italy can serve as examples[24].

In the literature on collective labour law one can find another approach to the concepts of conciliation and mediation according to which the former is nothing more than direct negotiations between the parties[25]. A justification for this position can be sought in the etymology of the concept of conciliation. Latin *conciliatio* means agreement, *conciliare* – to unite, *concilium* – gathering. According to this approach, conciliation involves meeting of and communicate between parties, i.e. discussions intended to resolve a dispute; this corresponds to the first stage of collective bargaining, i.e. negotiations[26]. It should be noted, however, that according to the views presented earlier, conciliation is a method

[20] See: Z. Kmieciak, *Mediacja i koncyliacja w prawie administracyjnym*, Kraków 2004, p. 27 n.

[21] See: E. Gmurzyńska, *Mediacja w sprawach sądowych w amerykańskim systemie prawnym – zastosowanie w Europie i w Polsce*, Warszawa 2006, p. 27 n.

[22] See: B Skulimowska, *Tryb i procedury rozwiązywania zatargów zbiorowych w Polsce na tle porównawczym*, Warszawa 1992, p. 25; *eadem*, *Procedury pojednawstwa i rozjemstwa w zatargach zbiorowych (studium porównawcze)*, Warszawa 1982, p. 31.

[23] E. Gmurzyńska, *Mediacja w sparwach*…, p. 264 n.

[24] More broadly on this subject: R. Morek, *Razem czy osobno*…, pp. 26, 27.

[25] T. Zieliński, *Prawo pracy. Zarys systemu. cz. III*, Warszawa 1986, p. 130; K.W. Baran, *Model polubownego likwidowania zbiorowych sporów pracy w systemie prawa polskiego*, „ Praca i Zabezpieczenie Społeczne" 1992, No. 3, p. 18 n.

[26] After: B. Skulimowska, *Sądy polubowne*…, p. 62.

of amicable dispute resolution, characterized by involvement of a third party[27]. Therefore, it would be difficult to put a sign of equality between both methods, since the bargaining regulations do not provide for participation of a third party. On the other hand, they also do not exclude such participation. Therefore, it cannot be ruled out that the parties decide to invite a third party to participate in negotiations if, in their opinion, such assistance would be needed[28]. In this case, however, such entity would participate in the negotiations informally, so we would not be dealing with conciliation or mediation in this case, either[29].

Just as there is no unanimity as to the extent of mediator's involvement in resolving various disputes by using peaceful methods, opinions about the manifestations of the mediator's activity in resolving collective labour disputes are also greatly varied. It is suggested that mediator's competences may vary and include ability to facilitate communication between the parties, conduct analytical and research activities, advise or encourage settlement of the dispute[30]. There are also views that mediator's basic task should be to competently identify facts based on which the parties may draw clear conclusions. However, they should not focus on pressing the parties towards a compromise. The findings acquired by them will provide better arguments[31]. The need for the mediator to build the trust between the parties of a dispute is also emphasised. They should not urge the parties to enter into an agreement against their will. The mediator's role is also to make it clear to the parties that termination of a dispute does not end their relation, as they will have to function in normal conditions[32].

It seems that the most convincing position is that the mediator's competences are diverse, and therefore the manifestations of their involvement will be varied. A characteristic feature of mediation is its low degree of formalization, and this should not be considered in terms of defective legal structures. The low degree of formalism in mediation guarantees a great deal of flexibility for the mediator in selecting mediation techniques and adapting them to a particular situation[33]. However, for these broad statutory regulations to become an advantage

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[27] T. Stręk, *Indywidualne spory pracy. Poradnik praktyczny*, Kraków 2003, pp. 12, 13.

[28] A different approach: A.M. Świątkowski, *Ustawa o rozwiązywaniu sporów zbiorowych* [in:] *Zbiorowe prawo pracy. Komentarz*, eds. J. Wratny, K. Walczak, Warszawa 2009, p. 340.

[29] Another opinion presented in the literature suggests that the mediator may join the dispute in the first phase, i.e. at the negotiation stage. See: W. Masewicz, *Ustawa o związkach zawodowych. Ustawa o rozwiązywaniu sporów zbiorowych. Ustawa o organizacjach pracodawców*, Warszawa 1998, p. 171.

[30] See: G. Goździewicz, *Arbitraż i mediacja w prawie pracy* [in:] *Arbitraż i mediacja w prawie pracy. Doświadczenia amerykańskie i polskie*, Lublin 2005, p. 18; J. Piątkowski, *Uprawnienia zakładowej organizacji związkowe*j, Toruń 2005, p. 283.

[31] See: J. Jończyk, *Prawo pracy*, Warszawa 1995, p. 234.

[32] See: M. Lewandowicz-Machnikowska, A. Górnicz-Mulcahy, *Mediacja w sporze zbiorowym*, „ADR" 2011, No. 2, p. 56.

[33] Cf. K.W. Baran, *Komentarz*…

rather than a disadvantage, the parties must trust the mediator. What qualities should a mediator have to earn this trust? It is difficult to create an objective catalogue of such attributes because trust can be assessed mainly based on premises of a subjective nature. However, since the mediator is an entity that, through their actions and behaviour, can contribute to building a new quality of collective labour relations, they should also meet objective conditions, and actually one can try to objectify the premises that the parties use when choosing a mediator.

Mediation is an art and a mission of good will[34]. The requirements set for the mediator by the parties should therefore correspond to the importance of this art. One can undoubtedly include here knowledge and competences in the field of psychology. This is because a lack of expert knowledge can be compensated for by the use expert's opinion. This, however, is impossible if the mediator has insufficient psychological knowledge, as it would undermine their competences. The mediator should be well acquainted with negotiation techniques, because this will be helpful in choosing the right methods of mediation. They should also be able to act in a composed manner, so as not to intensify the tension between the parties of the conflict. The ability to listen to others may be a quality that is essential when conducting mediation in a competent way. It will allow to obtain information necessary for efficient and effective mediation. The mediator should also be flexible, as a result to which, depending on the needs, they will be able to withdraw from the discussion or take a more dominant position. They should also enjoy good reputation, which seems necessary for the parties to trust them. Therefore, to be an effective mediator, not only knowledge and skills, but also appropriate personality traits are needed.

Choice of appropriate mediation techniques is, and should be, up to the mediator; this is directly related to the degree of their involvement. It seems that the latter should be determined by the parties of the collective dispute[35]. Indeed, one must not forget that, irrespective of the matter requiring mediation, it is the parties to the dispute that are the hosts. The mediator is only to help them communicate in such a way that the conflict does not escalate during the mediation process. The mediation procedure largely depends on the scale of the problem to which the collective dispute relates, which in turn affects the degree of emotional involvement of the parties, and their willingness to make concessions. All of these factors are not less important than the mediator's professionalism. It should also be emphasized that, compared to other disputes, collective disputes are characterized by a specificity reflected by the parties involved, and the subjective scope of the problem to which the dispute relates. Parties to such disputes include employee repre-

[34] Cf. A. Sobczyk, A. Daszczyńska, *Dialog społeczny jako narzędzie zbiorowego prawa pracy* [in:] *Dialog społeczny w praktyce przedsiębiorstw*, ed. J. Stelina, Gdańsk 2010, p. 26.

[35] Cf. K.W. Baran, *Modele polubownego likwidowania zbiorowych sporów pracy w systemie prawa polskiego*, „Praca i Zabezpieczenie Społeczne" 1992, No. 3, p. 21.

sentatives, i.e. trade unions, while in individual disputes it is persons directly involved in the conflict which then takes the form of a dispute. Collective disputes, being an externalised form of conflict, may stem from many individual conflicts, which due to their subjective scope and the homogeneity of the matter concerned transform into disputes of collective nature. The specificity of the parties to a collective dispute may, on one hand, reduce the intensity of the emotional factor, on the other, it may increase the sense of responsibility for the course and termination of the dispute, which bodes well for its settlement by agreement. This specificity also impacts the mediation model, since it is pointless to apply some of its models because of the parties' less emotional or personal approach to the dispute. Other methods cannot be applied either, given the parties' desire to end the dispute in agreement. This eliminates such methods as transformative or humanistic mediation. Classical mediation, however, can be used, but it may prove ineffective due to the fact that a resolution to the dispute, in this case, cannot be recommended by the mediator. Hence, classical mediation with elements of evaluative mediation cannot be ruled out, as it gives the mediator an opportunity to suggest solutions. It may be applied only if it is assumed that the mediator will remain impartial and will take into account the interests of both parties to the dispute[36]. However, it seems that the importance of an appropriate mediation technique cannot be overstated and it can be concluded that it will have a decisive impact on the successful completion of mediation.

Bibliogrpahy

Baran K.W., *Komentarz do art. 8 ustawy o rozwiązywaniu sporów zbiorowych*, www. lex.edu.pl.

Baran K.W., *Model polubownego likwidowania zbiorowych sporów pracy w systemie prawa polskiego*, „ Praca i Zabezpieczenie Społeczne" 1992, No. 3.

Bieliński A., *Uwagi wstępne na temat mediacji* [in:] *Sądy polubowne i mediacja*, ed. J. Olszewski, Warszawa 2008.

Bierzanek R., Simonides J., *Prawo międzynarodowe*, Warszawa 1997.

Bouelle L., *Australian ADR and the Issue of Judicial Discretion* [in:] *ADR International Applications, International Court of Arbitration Bulletin Special Supplement*, Paris 2001.

Dahrendorf R., *Teoria konfliktu w społeczeństwie przemysłowym* [in:] *Elementy teorii socjologicznych*, ed. R. Dahrendorf, Warszawa 1975.

Davis J.W.S., *Dispute Resolution in Japan*, Cambridge, Mass. 1996.

Dialog społeczny w praktyce przedsiębiorstw, ed. J. Stelina, Gdańsk 2010.

Doherty N., Guyler M., *Mediacja i rozwiązywanie konfliktów w pracy*, Warszawa 2010.

Elementy teorii socjologicznych, ed. R. Dahrendorf, Warszawa 1975.

Gmurzyńska E., *Mediacja w sprawach cywilnych w amerykańskim systemie prawnym – zastosowanie w Europie i w Polsce*, Warszawa 2006.

[36] A. Kowalczyk, *Pojęcie sporu zbiorowego oraz pokojowe metody jego rozwiązywania w prawie polskim*, Rzeszów 2017, p. 168.

Gmurzyńska E., Morek R., *Mediacja teoria i praktyka*, Warszawa 2009.
Goździewicz G., *Arbitraż i mediacja w prawie pracy* [in:] *Arbitraż i mediacja w prawie pracy. Doświadczenia amerykańskie i polskie*, ed. G. Goździewicz, Lublin 2005.
Gryniuk A., *Przymus prawny jako środek rozwiązywania konfliktów społecznych w dużych i wielkich grupach społecznych*, Toruń 1990.
Hankała A., *Konflikty międzyludzkie* [in:] *Wielka encyklopedia prawa*, ed. E. Smoktunowicz, Białystok–Warszawa 2000.
Jończyk J., *Prawo pracy*, Warszawa 1995.
Kalisz A., Zienkiewicz A., *Mediacja sądowa i pozasądowa. Zarys wykładu*, Warszawa 2009.
Kmieciak Z., *Mediacja i koncyliacja w prawie administracyjnym*, Kraków 2004.
Korybski A., *Alternatywne rozwiązywanie sporów w USA. Studium teoretycznoprawne*, Lublin 1993.
Kowalczyk A., *Pojęcie sporu zbiorowego oraz pokojowe metody jego rozwiązywania w prawie polskim*, Rzeszów 2017.
Lewandowicz-Machnikowska M., Górnicz-Mulcahy A., *Mediacja w sporze zbiorowym*, „ADR" 2011, No. 2.
Łukaszewicz Ł., *Aksjologiczne i prakseologiczne przesłanki polubownego rozstrzygania sporów i mediacji* [in:] *Sądy polubowne i mediacja*, ed. J. Olszewski, Warszawa 2008.
Masewicz W., *Ustawa o związkach zawodowych. Ustawa o rozwiązywaniu sporów zbiorowych. Ustawa o organizacjach pracodawców*, Warszawa 1998.
Masewicz W., *Zatarg zbiorowy pracy*, Bydgoszcz 1994.
Morek R., *Razem czy osobno: uwagi o znaczeniach pojęć mediacji i koncyliacji* [in:] *Sądy polubowne i mediacja*, ed. J. Olszewski, Warszawa 2008.
Nocuń A., Szmagalski J., *Podstawowe umiejętności w pracy socjalnej i ich kształtowanie. Porozumiewanie się, rozwiązywanie problemów i konfliktów*, Katowice–Kraków 1998.
Piątkowski J., *Uprawnienia zakładowej organizacji związkowej*, Toruń 2005.
Sądy polubowne i mediacja, ed. J. Olszewski, Warszawa 2008.
Skulimowska B., *Procedury pojednawstwa i rozjemstwa w zatargach zbiorowych (studium porównawcze)*, Warszawa 1982.
Skulimowska B., *Tryb i procedury rozwiązywania zatargów zbiorowych w Polsce na tle porównawczym*, Warszawa 1992.
Sobczyk A., Daszczyńska A., *Dialog społeczny jako narzędzie zbiorowego prawa pracy* [in:] *Dialog społeczny w praktyce przedsiębiorstw*, ed. J. Stelina, Gdańsk 2010.
Stręk T., *Indywidualne spory pracy. Poradnik praktyczny*, Kraków 2003.
Świątkowski A.M., *Ustawa o rozwiązywaniu sporów zbiorowych* [in:] *Zbiorowe prawo pracy. Komentarz*, eds. J. Wratny, K. Walczak, Warszawa 2009.
Wach A., *Alternatywne formy rozwiązywania sporów sportowych*, Warszawa 2005,
Wach A., *Delimitacja mediacji i koncyliacji jako samodzielnych form ADR*, „Radca Prawny" 2003, No. 1.
Wielka encyklopedia prawa, ed. E. Smoktunowicz, Białystok–Warszawa 2000.
Zbiorowe prawo pracy. Komentarz, eds. J. Wratny, K. Walczak, Warszawa 2009.
Zieliński T., *Prawo pracy. Zarys systemu. Cz. III*, Warszawa 1986.
Żołyński J., *Ustawa o rozwiązywaniu sporów zbiorowych. Komentarz. Wzory pism*, Warszawa 2012, Lex.

Summary

Mediation, as a way of resolving disputes, including collective disputes, is associated with relatively small regulatory interference by the legislator, which is reflected by one of its features, i.e. a lack of formal constraints. Therefore, the question arises about the mediator's role in resolving

collective disputes. Undoubtedly, they must guarantee to be impartial, however, it should be remembered that parties to a collective dispute are its hosts. Hence, it seems that the importance of an appropriate mediation technique cannot be overstated and it can be concluded that it will have a decisive impact on the successful completion of mediation. Therefore, the mediator's role is primarily to help the parties communicate so that the conflict does not escalate during the mediation process.

Keywords: peace, conciliation, mediation, dispute, conflict

MEDIATOR I JEGO ROLA W SPORACH ZBIOROWYCH

Streszczenie

Mediacja jako sposób rozwiązywania sporów, w tym sporów zbiorowych, wiąże się ze stosunkowo małą ingerencją ustawodawcy w jej doregulowanie, co jest odzwierciedleniem jednej z jej cech w postaci odformalizowania. Pojawia się w związku z tym pytanie o rolę mediatora w rozwiązywaniu sporów zbiorowych. Bez wątpienia musi on być gwarantem bezstronności, należy jednak pamiętać, że w przypadku sporu zbiorowego strony są jego gospodarzami. Wydaje się zatem, że nie można przeceniać zastosowania odpowiedniej techniki mediacyjnej i wnioskować, że będzie ona miała decydujący wpływ na zakończenie mediacji powodzeniem. Rolą mediatora jest zatem przede wszystkim pomoc w komunikowaniu się stronom w taki sposób, aby nie doszło do eskalacji konfliktu w czasie trwania procesu mediacji.

Słowa kluczowe: pokojowy, pojednanie, mediacja, spór, konflikt

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POLICE SOCIAL AND ORGANIZING ACTIVITIES UNDERTAKEN TO PROTECT PUBLIC SAFETY AND ORDER

Ensuring the security of citizens and public order is one of the basic tasks of the state carried out by the Police, which, according to Art. 1, clause 1 of the Act of 6 April 1990 on the Police[1], is an armed and uniformed formation serving the society and intended to protect people's security and to maintain public safety and order. S. Pieprzny emphasized that "in general, most of the police activities are carried out using imperious forms"[2] however, non-empowered forms, and especially social and organizational activities, are gaining in importance and allow for more effective implementation of the tasks performed by this formation.

The legal definition of the Police shows that its main task is to protect people's safety and maintain public safety and order, however, there are no legal definitions in the statutory terms. According to S. Pikulski, security is "a certain desirable state of affairs guaranteeing the smooth functioning of public facilities in the state and the safety of citizens' lives, including the protection of their lives, health and property"[3]. E. Ura pointed out that public security is "such a state in which all citizens individually indeterminate, living in the state and society, are not in danger, regardless of its sources. The protection of this security belongs to the state that sets safety limits and defines what disturbs or may hinder the normal functioning of the state. The source of danger can be in communication, traffic, water, during catastrophes or natural disasters, and it can also come from man (assaults, robberies)"[4]. In turn, M. Wierzbowski understands the concept of public order as binding in the sphere of public life, which consists in compliance

[1] Dz.U. 2020, Item 360 as amended.

[2] S. Pieprzny, *Policja. Organizacja i funkcjonowanie*, Warszawa 2007, p. 82.

[3] S. Pikulski, *Podstawowe zagadnienia bezpieczeństwa publicznego* [in:] *Prawne i administracyjne aspekty bezpieczeństwa osób i porządku publicznego w okresie transformacji ustrojowo-gospodarczej*, eds. W. Bednarek, S. Pikulski, Olsztyn 2000, p. 101.

[4] E. Ura, *Prawo administracyjne*, Warszawa 2015, p. 411.

with the principles of social coexistence and respect for existing and accepted norms of behavior in social contacts and in the use of public devices[5]. According to E. Ura the notion of public order "refers to those tasks of public administration bodies and administrative entities that are directly related to maintaining order enabling the normal development of life in the state. This is about ensuring the proper sanitary state of public facilities, maintaining order on the road public, compliance with regulations on associations, public collections, vehicle registration, construction, forestry and hunting regulations. The scope of this concept also includes taking actions aimed at preventing and combating alcoholism and drug addiction, combating the effects of natural disasters and epidemics, compliance with state act regulations. civil, border signs, compliance with specific social discipline, etc."[6] Therefore, rightly, S. Pieprzny pointed out that "the boundaries of the notions of security and public order are fluid and indefinite", and thus the Police's tasks should also be considered. This formation is to take actions to protect society and activities serving the state[7].

The basic tasks of the Police, in accordance with Art. 1, clause 2 of the Police Act are: protection of life and health of people and property against unlawful attacks that violate these goods; protection of public safety and order, including ensuring peace in public places and in means of public transport and public transport, in road traffic and in waters intended for common use; initiating and organizing activities aimed at preventing committing crimes and offenses as well as criminogenic phenomena and cooperating in this respect with state organs, self-government bodies and social organizations; conducting counter-terrorism activities within the meaning of the Act of 10 June 2016 on anti-terrorist activities[8]; detecting offenses and prosecution of their perpetrators; protection of facilities constituting the seat of members of the Council of Ministers, with the exception of facilities serving the Minister of National Defense and the Minister of Justice, indicated by the minister competent for internal affairs; supervision of specialist armed protective formations within the scope specified in separate regulations; monitoring compliance with order and administrative regulations related to public activities or in public places; cooperation with the police of other countries and their international organizations, as well as with the bodies and institutions of the European Union on the basis of international agreements and arrangements as well as separate provisions; processing of criminal information, including personal data; maintaining data collections containing information collected by authorized bodies about the fingerprints of persons, unidentified fingerprints from crime scenes and the results of deoxyribonucleic acid

[5] *Prawo administracyjne*, ed. M. Wierzbowski, Warszawa 2011, pp. 671–672.
[6] E. Ura, *Prawo administracyjne*, p. 411.
[7] S. Pieprzny, *Policja. Organizacja i funkcjonowanie*, Kraków 2003, Lex (27.05.2020).
[8] Dz.U. 2019, Item 796.

(DNA) analysis. This catalog is open and its limitation is not possible from a practical point of view because the Police can take many actions in various legal forms as long as they are aimed at protecting and maintaining security and public order.

According to K.M. Ziemski, "by the legal form of administration's operation, we shall mean a separate or identifiable type of conventional or actual activity with fixed features, or a set of such activities, defined to perform public administration tasks of the entity (or group of entities) in to fulfill public administration tasks"[9]. J. Starościak distinguished six basic legal forms of taking actions by the administration: establishing normative acts, issuing administrative acts, concluding contracts, concluding administrative agreements, conducting social and organizational activities as well as performing material and technical activities[10]. Legal forms can also be distinguished taking into account their division into imperious and non-imperious ones. E. Ochendowski under the concept of administrative power ("empire") understood "the right to use direct coercion by administrative bodies to implement their unilateral orders (decisions)"[11]. On the other hand, the use of non-imperious forms is characterized by the fact that the positions of the administrative body and the other entity of the administrative law relationship are equal, or that the public administration body does not occupy a dominant position[12].

The analysis of statutory tasks assigned to the Police, according to J. Korczak, leads to the conclusion that imperious forms of performing tasks are dominant and that the Police authorities and its officers are entitled to enter the personal sphere of a person and citizen in the field of e.g. personal control, browsing the contents of luggage or checking content of cargo and preventive checking, including the use of direct coercion[13]. Among the imperious forms of police activity there are: normative acts issued by Police bodies (e.g. ordinances, regulations, guidelines); administrative acts shaping the legal situation of their addressees (e.g. gun permit); material and technical activities based on a clear legal basis and having specific legal effects (e.g., identifying people to determine their identity)[14]. S. Pieprzny emphasized that "social, economic and political changes in the state necessitate the search for ever new legal forms and methods of operation of organs operating in the state. Such changes also occur in the field of legal forms of the Police, and

[9] K.M. Ziemski, *Podstawy problematyki* [in:] *System Prawa Administracyjnego*, Vol. V: *Prawne formy działania administracji*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2013, p. 4.

[10] J. Starościak, *Administracja. Zagadnienia teorii i praktyki*, Warszawa 1974, p. 83.

[11] E. Ochendowski, *Prawo administracyjne. Część ogólna*, Toruń 2002, p. 25.

[12] W. Chróścielewski, *Imperium a gestia w działaniach administracji publicznej (W świetle doktryny i zmian ustawodawczych lat 90.)*, „Państwo i Prawo" 1995, No. 6, pp. 51–52.

[13] J. Korczak, *Niewładcze formy działania Policji* [in:] *100-lecie Policji. Policja. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019, p. 103.

[14] More: E. Kubas, *Czynności faktyczne funkcjonariuszy Policji* [in:] *100-lecie Policji. Policja. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019, p. 124 n.

their purpose is to ensure the effectiveness of implementation of actions"[15]. Therefore, the implementation of tasks related to ensuring public safety and order with the use of social and organizational activities classified as non-imperious form of action and plays an increasingly important role.

According to M. Pomykała, "most of the tasks of the Police are preventive. They are aimed at preventing the occurrence of negative phenomena, which would be attacks on goods protected by law, such as life, health, property, security and public order. Police's task is to above all, to overtake or prevent the occurrence of an undesirable state, or a violation of the law. The task of the Police may be to eliminate the causes of threats, reduce the threats themselves, as well as increase the sense of security in society and improve the quality of life"[16].

Social and organizing activities got their name from the fact that it can also be performed by any social organization[17]. It can be implemented as a basic form of performing public tasks. This happens when a given public administration body is required to perform a specific task but has not been equipped with specific means of action. These activities may also be auxiliary to imperious activities in order to strengthen the impact on a given entity[18].

The scope of measures used in this activity of the Police has not been precisely defined because the multilaterality of socio-organizational activities in the field of security and public order prevents the creation of an exhaustive list of such activities. At the same time, it should be noted that their comprehensive determination would prevent the use of other forms of action adequate to the changing conditions of social life, and thus prevent the Police from fulfilling its initiating role in ensuring security and public order. Therefore, the means used in this activity are left to the appreciation and experience of the Police. Among them we can distinguish: organization of meetings with the public, talks and training with school youth, organization of patrols with student youth, press and radio and television speeches on threats, issuing leaflets and materials on ways to prevent violations of human security, organizing competition, competitions and conferences[19].

Social and organizational activities play a very important role in the implementation by the public administration of its organizational function related to the activation of society to cooperate and in expanding public awareness because these are actions taken in the public interest and aimed at interacting with society. That is why the administration, which performs public tasks, resigns from the measures

[15] S. Pieprzny, *Policja. Organizacja*…, Lex.

[16] M. Pomykała, *Programy prewencyjne jako forma działań zapobiegawczych Policji* [in:] *100-lecie Policji. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019, p. 132.

[17] M. Wierzbowski, A. Wiktorowska, *Prawne formy działania administracji* [in:] *Polskie prawo administracyjne*, ed. J. Służewski, Warszawa 1995, p. 214.

[18] J. Paśnik, *Prawne formy działania administracji publicznej* [in:] *Administracja publiczna i prawo administracyjne w zarysie*, eds. M. Karpiuk, J. Kowalski, Warszawa–Poznań 2013, p. 123.

[19] S. Pieprzny, *Policja. Organizacja*…, Lex.

of state coercion, becomes a creator of social life – encourages, promotes certain attitudes and behaviors, supports the activity and initiative of citizens, conducts information and awareness-raising campaigns – but it should not replace the activity of administered entities in this way but to support their initiatives, enforce citizens' independence and self-sufficiency, contributing to shaping civil society[20]. Also the purpose of this activity must fall within the scope of tasks falling within the competence of the given public administration body. Therefore, this activity does not create new norms of the legal order and coercion cannot be used to enforce its effects. However, prizes and awards are allowed[21]. T. Kuta pointed out that an important feature of non-imperious activities, including social and organizing activities, is that administrative bodies are left with the option of choosing the place, time, subject and form of these activities. The authority decides whether to act and how and what actions should be used to achieve the goal set by law[22].

According to J. Supernat, information and the way it is communicated to the public, plays a key role in implementing social and organizational activities. The administration has a very large amount of information and in many areas of social life there is a monopoly of public administration on information. Therefore, public administration may use its information to influence the environment and perform specific public tasks. One could even say that citizens expect public administrations to provide information. This is done, among others by seeking advice from officials, using state archives or visiting exhibitions organized by organizational units of public administration. It should be emphasized that public administration may distribute specific messages by itself, but may also oblige other entities to disseminate information on a specific topic[23]. Considering that the Police is the basic formation that is responsible for ensuring public security and order in the state, it is within the framework of social and organizational activities that it is obliged to inform citizens about the sources of threats as well as about ways and forms of preventing hazards .

As part of social and organizing activities in cooperation with the Road Traffic Department of the Voivodship Police Headquarters in Katowice, a spot for social action from 2018 was created entitled "Love – fasten seatbelts"[24]. This film shows how important it is to fasten seatbelts and transport children correctly

[20] K. Kłosowska-Lasek, *Wpływ przemian cywilizacyjnych na działania społeczno-organizatorskie administracji* [in:] *Wpływ przemian cywilizacyjnych na prawo administracyjne i administrację publiczną*, eds. P.J. Suwaj, J. Zimmermann, Lex 2013 (30.05.2020).

[21] E. Olejniczak-Szałowska, *Działalność społeczno-organizatorska* [in:] *Prawo administracyjne – pojęcia, instytucje, zasady w teorii i orzecznictwie*, ed. M. Stahl, Warszawa 2000, p. 366.

[22] T. Kuta, *Pojęcie działań niewładczych w administracji. Na przykładzie administracji rolnictwa*, Wrocław 1963, pp. 49–50.

[23] J. Supernat, *Instrumenty działania administracji publicznej – studium z nauki administracji*, Wrocław 2003, pp. 73–77.

[24] http://www.podkarpacka.policja.gov.pl/rze/ruch-drogowy/profilaktyka/97937,Kochaj-zapinaj-w-pasy.html (30.05.2020).

in child car seats. This action became very popular because in the film, next to children from Kindergarten number 87 in Katowice, the famous polish actor Andrzej Grabowski starred. At the initiative of the Voivodship Police Headquarters in Katowice, a spot for social action from 2020 was created, entitled "Before you pass, think". In a short film promoting safe road use, the actress Kinga Preis starred as a pedestrian. The purpose of the advertising spot was to draw the attention of drivers to their behavior when driving to marked crossings. The film was also a warning to pedestrians not to break the traffic rules themselves[25]. It should be emphasized that the indicated spots promoting individual social campaigns are still broadcast in the media and are found on social networks so that the topics discussed in them are still valid. In addition, the involvement of popular actors means that members of the public pay more attention to the threats to their health and life, as well as to public safety and order, shown in the films.

Social and organizing activities are also widely implemented by police officers from the Podkarpackie Voivodeship. One of the popular social actions carried out in this area is "Barrier at Risk", under which policemen from the Road Traffic Department of the Provincial Police Headquarters in Rzeszów handed drivers and pedestrians leaflets informing about proper behavior at railway crossings. This campaign has been conducted since 2005 and since October 2012 it has been expanded to inform residents of Rzeszów and the surrounding area about accidents that may occur during crossing the tracks in prohibited places[26].

Noteworthy are the actions taken by police officers in the Podkarpackie Voivodeship in connection with the introduction of an epidemic emergency in the Republic of Poland[27] from 14 March 2020, followed by the epidemic status from 20 March 2020[28] in connection with SARS-CoV-2 infection. At that time, the policemen undertook a number of social and organizational activities. For example, it is worth pointing out the on-line meeting initiated by the police officer, Bernard Dul, initiated by the Poviat Police Headquarters in Nisko. This officer participated in an online on-line lesson with high school students from Rudnik on San. The topic of the meeting were online threats. On-line meetings were conducted in the form of an educational panel on the safe use of information and computer technologies and cyberbullying. This action was aimed at presenting the threats that appear on the Internet. The policeman familiarized students with the phenomenon of cyberbullying, internet crime, rules of maintaining security and privacy while us-

[25] http://slaska.policja.gov.pl/kat/informacje/wiadomosci/277830,Zaproszenie-dla-mediow.html (30.05.2020).

[26] http://www.podkarpacka.policja.gov.pl/rze/aktualnosci/93937,Bezpieczny-przejazd-quotSzlaban-na-ryzykoquot. html?search=14182515 (6.06.2020).

[27] Regulation of the Minister of Health of 13 March 2020 regarding the announcement of an epidemic emergency in the territory of the Republic of Poland (Dz.U. 2020, Item 433 as amended).

[28] Regulation of the Minister of Health of 20 March 2020 regarding the announcement of the state of the epidemic in the territory of the Republic of Poland (Dz.U. 2020, Item 491 as amended).

ing a computer and the Internet. He also raised the issue of the responsibility of those who commit online crimes. The premise of the meeting was not only to indicate what deeds may constitute a crime but above all how to protect yourself and your privacy against online criminals[29]. Noteworthy is also the action initiated by the Poviat Police Headquarters in Ustrzyki Dolne. Policemen and command employees initiated the "Give a mask" campaign, which involved organizing a fundraising for the purchase of protective masks for the residents of the Nursing Home in Moczary[30]. The officers of this poviat headquarters were also involved in the "W Święta #zostańwdomu" campaign in which they called for staying at home during Easter and not exposing others to the risk of falling ill[31].

To sum up, it should be noted that the Police perform many of their statutory tasks using non-imperious legal forms of action, among which social and organizational activities deserve special attention. Examples of such activities cited in this article show that extensive information activities cause greater public awareness and thus prevent many crimes and offenses. Also during the prevailing pandemic caused by SARS-CoV-2, police officers take a number of actions to inform the public about the risks associated with the spread of this virus as well as ways to avoid a threat to their health and life. Social and organizational activities, and above all its effects, should be assessed positively, because without the use of coercion it enables the implementation of tasks related to ensuring security and public order in various political, social and economic conditions.

Bibliography

Chróścielewski W., *Imperium a gestia w działaniach administracji publicznej (W świetle doktryny i zmian ustawodawczych lat 90.),* „Państwo i Prawo" 1995, Vol. 6.

Kłosowska-Lasek K., *Wpływ przemian cywilizacyjnych na działania społeczno-organizatorskie administracji* [in:] *Wpływ przemian cywilizacyjnych na prawo administracyjne i administrację publiczną*, eds. P.J. Suwaj, J. Zimmermann, Lex 2013.

Korczak J., *Niewładcze formy działania Policji* [in:] *100-lecie Policji. Policja. Prawne formy działania,* eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019.

Kubas E., *Czynności faktyczne funkcjonariuszy Policji* [in:] *100-lecie Policji. Policja. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019.

Kuta T., *Pojęcie działań niewładczych w administracji. Na przykładzie administracji rolnictwa*, Wrocław 1963.

Ochendowski E., *Prawo administracyjne. Część ogólna*, Toruń 2002.

[29] http://www.podkarpacka.policja.gov.pl/rze/komendy-policji/kpp-nisko/wydarzenia/98177,Spotkanie-on-line-z-nizanskim-policjantem.html (10.06.2020).

[30] http://www.podkarpacka.policja.gov.pl/rze/komendy-policji/kpp-ustrzyki-dolne/wydarzenia/97649,quotPodaruj-maseczkequot-akcja-ustrzyckiej-komendy-video.html?search=696206840 (10.06.2020).

[31] http://www.podkarpacka.policja.gov.pl/rze/komendy-policji/kpp-ustrzyki-dolne/wydarzenia/97514,W-swieta-zostanwdomu.html?search=696206840 (10.06.2020).

Olejniczak-Szałowska E., *Działalność społeczno-organizatorska* [in:] *Prawo administracyjne – pojęcia, instytucje, zasady w teorii i orzecznictwie*, ed. M. Stahl, Warszawa 2000.
Paśnik J., *Prawne formy działania administracji publicznej* [in:] *Administracja publiczna i prawo administracyjne w zarysie*, eds. M. Karpiuk, J. Kowalski, Warszawa–Poznań 2013.
Pieprzny S., *Policja. Organizacja i funkcjonowanie*, Kraków 2003, Lex.
Pieprzny S., *Policja. Organizacja i funkcjonowanie*, Warszawa 2007.
Pikulski S., *Podstawowe zagadnienia bezpieczeństwa publicznego* [in:] *Prawne i administracyjne aspekty bezpieczeństwa osób i porządku publicznego w okresie transformacji ustrojowo-gospodarczej*, eds. W. Bednarek, S. Pikulski, Olsztyn 2000.
Pomykała M., *Programy prewencyjne jako forma działań zapobiegawczych Policji* [in:] *100-lecie Policji. Policja. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019.
Prawo administracyjne, ed. M. Wierzbowski, Warszawa 2011.
Starościak J., *Administracja. Zagadnienia teorii i praktyki*, Warszawa 1974.
Supernat J., *Instrumenty działania administracji publicznej – studium z nauki administracji*, Wrocław 2003.
Ura E., *Prawo administracyjne*, Warszawa 2015.
Wierzbowski M., Wiktorowska A., *Prawne formy działania administracji* [in:] *Polskie prawo administracyjne*, ed. J. Służewski, Warszawa 1995.
Ziemski K.M., *Podstawy problematyki* [in:] *System Prawa Administracyjnego*, Vol. V: *Prawne formy działania administracji*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2013.

Summary

The Police formation is responsible for ensuring citizens' safety and public order. The purpose of this article is to demonstrate that this task can be effectively implemented by using one of the non-empowered forms – socio-organizational activity. Promotion of this form of action, based on informing the public about the dangers to health and life as well as how to prevent dangers has a very important significance in the era of ever greater access to the Internet and in many cases allows a departure from the official actions.

Keywords: Police, social and organizing activities, public safety, public order

DZIAŁALNOŚĆ SPOŁECZNO-ORGANIZATORSKA POLICJI NA RZECZ ZAPEWNIENIA BEZPIECZEŃSTWA I PORZĄDKU PUBLICZNEGO

Streszczenie

Policja jest formacją odpowiedzialną za zapewnienie bezpieczeństwa i porządku publicznego. Celem niniejszego artykułu jest wykazanie, że zadanie to może być w sposób efektywny realizowane przy zastosowaniu jednej z niewładczych form działania administracji – działalności społeczno-organizatorskiej. Propagowanie tej formy działania, opierającej się na informowaniu społeczeństwa o zagrożeniach dla zdrowia i życia, a także o sposobach zapobiegania niebezpieczeństwom, ma bardzo istotne znaczenia w dobie coraz szerszego dostępu do internetu i w wielu przypadkach umożliwia odstąpienie od działań władczych.

Słowa kluczowe: Policja, działalność społeczno-organizatorska, bezpieczeństwo publiczne, porządek publiczny

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RECHTSSTAAT AND IT'S LEGAL ORDER ACCORDING TO ROBERT VON MOHL

Introduction

Robert von Mohl, German 19th century lawyer and politician is considered to be one of the creators and popularizers of the *Rechtsstaat* concept[1]. It is obvious that rule of law (*Rechtsstaat*) cannot function without legal norms. "The sanctity of all laws"[2] is the supreme principle of the rule of law state in von Mohl's thought. Maintaining legal order covers at least half the scope of its activity[3]. This article is an attempt to answer the question of what this order should look like, and on what principles it should be based on, according to von Mohl. The article proves that the main source of law for von Mohl is the written (positive) law. In addition to this type, the sources of law will also include customary law and court activities. There is no doubt, however, that in rule of law the main role will be played by legal norms arranged in three large groups[4]. Throughout the

[1] For the purposes of this article the term *Rechtsstaat* will be translated as "rule of law" but also: "legal state".

[2] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, Tübingen 1872, pp. 325–326; K. Sobota, *Das Prinzip Rechtsstaat*, Tübingen 1997, pp. 313–314.

[3] The second scope of state's activity, fulfilled by the "Police" (*Polizei)*, was supporting the individuals in achieving the objects of their life. More about the concepts of the „Police" in 19th century: G. Zimmermann, *Die Deutsche Polizei im neunzehnten Jahrhundert*, Bd. 1, Hannover 1845; W. Szwarc, *Zarys ewolucji pojęcia „policji" w monarchii pruskiej w XVIII i XIX w.* [in:] *Wybrane problemy teorii i praktyki państwa i prawa*, eds. H. Groszyk, L. Dubel, Lublin 1986, pp. 117–133. On the notion of „Police" also: K. Dąbrowski, *Ewolucja pojęcia policji w kontekście genezy żandarmerii w Niemczech*, „Annales Universitatis Mariae Curie-Sklodowska, Sectio G (IUS)" 2016, Vol. XXV, 3, pp. 205–208.

[4] Despite the fact that the aforementioned nomenclature (constitutional act, act, ordinance) is appropriate for the rule of law in von Mohl, he still believes that the distinguished types of laws or rights in the state may also appear in other types of states. Therefore, regulations corresponding to

entire period of his scientific activity, the German liberal was attached to his three-level classification of normative acts in the state. This classification was based on the division into laws that can be called "state" or "constitutional" (*Verfassungsgesetze*), "ordinary acts" (laws, statutes) (*einfache Gesetze*), which are issued by the political authority in the state (primarily a monarch in von Mohl) in consultation with a representative body, and ordinances (*Verordnungen*), issued by the authorities unilaterally and autonomously[5]. The aforesaid division is based on the prominence that each type of source of law has in the state. In von Mohl the highest-level statutes, all kinds of constitutional acts, will contain the basis for all further legal institutions. "Ordinary" acts will regulate individual legal issues in a manner consistent with higher-order norms. Ordinances, which are the third type of legal act, will not contain new laws, but only provisions leading to the enforcement of norms contained in higher-order acts[6].

Written law versus customary law

As already indicated at the beginning of this article, according to von Mohl there may be also other sources of legal norms, extending the sources of law based on the above-mentioned triad. Therefore, before analyzing the above-mentioned triad, which is undoubtedly of paramount importance, it is worth devoting a moment to von Mohl's perception of the role of customary law and it's relation to written law. This is important because it will prove that German scholar was not an implacable supporter of exclusively written law. As an empiricist above all, he recognized customary law and, moreover, he also accepted its existence.

For von Mohl, there was no doubt that written law is not the sole source of law in state. There was also the customary, "people's" law (*Volksrecht*)[7]. Customary law manifested itself as a system that grew out of all sorts of historical, political, but also religious experience, of a given community, and what was of utmost importance. It also related to the most common problems of everyday life. The impulse for the creation of a norm of customary law is the need to regulate a given state or actual relationship in a given community. On the other hand, its validity is sanctioned by "community of beliefs" (*Vereinigung der Ueberzeugungen*)

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constitutional and ordinary statutes or ordinances will be found not only in the rule of law. For example, a holy scripture may play the role of constitutional act in theocracy. R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 155; Ch.H. Schmidt, *Vorrang der Verfassung und konstituionelle Monarchie: eine dogmengeschichtliche Untersuchung zum Problem der Normenhierarchie in den deutschen Staatsordnungen im frühen und mittleren 19. Jahrhundert (1818–1866)*, Berlin 2000, p. 160.

[5] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, pp. 145–146.

[6] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, Tübingen 1862, pp. 404, 405, 417.

[7] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 144.

concerning the validity of the norm of customary law thus created. Von Mohl does not appear to be an opponent of such norms. Moreover, in his teaching we find a statement about a kind of "eternity" of customary law. He is characterized by the belief that as long as there are specific communities of people (including nations), they will produce custom-based norms (despite the fact that as written law develops, customary law will lose its significance)[8].

Speaking of customary law as a source of rights and obligations in a state, one cannot fail to address the issue of the relationship between this source of law and written law. Von Mohl described this relationship in an unclear manner. As a supporter and promoter of the *Rechtsstaat* idea he, at the same time, also stated: "There is no relationship that would not be able to obtain its right both by statute and by the consciousness of the nation"[9]. Therefore, it should be stated that he holds written law and customary law as two equivalent and, what is more, also legal orders in the state. One cannot resist the impression that von Mohl, based on empirical analysis of reality (in which customary law functioned), was not able to ignore customary norms as a source of law, but on the other hand was well aware of the enormity of problems that the existence of the two, parallel legal orders can introduce in the functioning of the state. Seeking a way out of a possible collision of customary and written norms, von Mohl did not seem to give priority to the latter. He stated that in the event that in the interpretation process it is not possible to resolve the collision between these two types of laws, it is the time of their creation that should decide, with priority given to this norm that appeared later[10]. Unfortunately, von Mohl did not exhaustively develop his ideas regarding the relationship between customary law and statutory law. It can be assumed, however, that the concept presented above resulted from the scholar's overarching belief that the state and all its institutions should correspond to the "level of civilization" (*Gesittigung*) of the nation. The scientist was convinced that the law, and especially the constitution of a state, should always reflect the level of development of the nation, as well as its customs.

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[8] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, p. 385. It requires underlining that in von Mohl's classification of "state sciences" (*Staatswissenschaften*) constitutional law was divided into "philosophical" and "obligatory" (positive). *Idem*, *Encyklopädie der Staatswissenschaften*, p. 174. Philosophical law can be defined as a creation based on the principles of logic and common sense, and not resulting from any legal principles. *Ibidem*, p. 188, *idem*, *Das Staatsrecht des Königreiches Württemberg*, Bd 1*: Das Verfassungsrecht*, Tübingen 1840, p. 87. It is legitimate to conclude that in philosophical terms the law overlaps, in von Mohl's teaching, with the essence of natural law. More about the problem of natural law: M. Łuszczyńska, *Prawo natury a prawo stanowione – dwa antagonistyczne ujęcia filozofii prawa*, „Annales UMCS Sectio G (Ius)" 2005–2006, Vol. LII/LIII, pp. 87–108; R. Wojtyszyn, *Szkoła prawa natury od Hugona Grocjusza do Johna Locke'a*, „Studia Erasmiana Wratislaviensia Wrocławskie Studia Erazmiańskie. Zeszyt Naukowy Studentów, Doktorantów i Pracowników Naukowych Uniwersytetu Wrocławskiego" 2007, pp. 49–63.

[9] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, p. 394.

[10] *Ibidem*, pp. 395–397.

The aforedescribed von Mohl's approach to customary law gains a kind of explanation, when we analyze the scholar's views on the concepts of the so-called German Historical School[11]. It should be noted that von Mohl's views coincide with those of the historical school, saying that customary laws, the ways of life of individual nations, their characteristics and legal awareness should be taken into account in the creation of law. The content of law cannot depend solely on the preferences and approval of the legislative authority[12]. It cannot be said, however, that von Mohl made a full reception of historical school's views on law. First of all, one should note his opposition to the view of comprehending the law as a phenomenon arising spontaneously in a given nation (similarly as e.g. language). Von Mohl regarded this understanding of law as superfluous "mysticism"[13].

Therefore, also the historical school's understanding of the legislative activity of the state, understood as describing and conferring the statutory form to standards independently created in the nation, did not find support of the German scholar[14]. One may conclude that he considered this understanding of the legislative activity of the state incomplete, and at least partly disagreed with such view[15]. On the one hand, because von Mohl did not completely dissociate himself from the so--called "spiritual factor" in relation to legislation, he argued that its task is to observe and give legal (statutory) dimension and the possibility of execution of customary laws functioning in a given nation (this may also indicate a desire to avoid collision between customary and written law). On the other hand, however, he was strongly convinced that the state cannot limit itself to merely reading legal norms encoded in the consciousness of the nation. Therefore, the state must also make laws independently, autonomously[16]. This approach is due to the belief that the faster and stronger development of states and societies (it is worth remembering that von Mohl worked during the industrial revolution in Germany at that time) causes that the legal awareness and customary norms functioning in them are no longer sufficient to regulate their relations in comprehensive way. This situation means that the state must create and introduce certain laws independently. Observing the trends prevailing in society and nation, and anticipating their development,

[11] The creator of this trend was Friedrich Carl von Savigny. The main assumptions of this thought were treating the law as a historical phenomenon, reflecting the history and spirit of a particular nation. The historical school opposed codification and the concepts of the law of nature. More about the views of the German historical school: R. Gmür, *Savigny und die Entwicklung der Rechtswissenschaft*, Münster 1962; K. Opałek, J. Wróblewski, *Niemiecka szkoła historyczna w teorii prawa*, „Przegląd Nauk Historycznych i Społecznych" 1954, Vol. 5, pp. 237–317.

[12] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, p. 381.

[13] *Ibidem*.

[14] *Ibidem*, p. 382.

[15] On discrepancies between a conservative and a liberal approach to law: H. Uhlenbrock, *Der Staat als juristische Person: Dogmengeschichtliche Untersuchung zu einem Grundbegriff der deutschen Staatsrechtslehre*, Berlin 2000, p. 60.

[16] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, p. 382.

the state through the law has the task of influencing the life of the community, so as to at least support its development or resolve conflicts. Von Mohl even granted the state the right to act against established beliefs in the nation, if a more important interest of the community would speak for that[17].

To sum up the above remarks, it should be stated that von Mohl (as in many cases, in fact) opted for the middle way. He not only allowed the existence of customary law in the state, but also was of the opinion that it should be taken into account in the legislative process, and that to the largest possible extent. Nevertheless, it should not form the basic reference point. On the other hand, such a reference point should be the maintenance of "unity and organic order" (*Einheit und organischen Ordnung*). In addition, according to von Mohl, the task of the state was to organize and change the unjust and improper customary laws functioning in the nation[18].

Verfassung and *Verfassungs-Urkunde*

There is no doubt that the main axis of the analysis of sources of law in von Mohl's doctrine will be the constitution-act-ordinance triad. Issues of applicability of customary law, although noteworthy, are side problems. Whereas the aforementioned triad appears in most of works by von Mohl, and what is also important – throughout the entire period of his work. Before we discuss von Mohl's perception of the constitution or, more specifically, the "basic law", we should look briefly at the history of the meaning of the concept of *Verfassung* in German legal science. While today the term *Verfassung* means the constitution

[17] *Ibidem*, pp. 382–384.

[18] *Ibidem*, p. 383. The less important sources of law, yet marked in the von Mohl's legal state, include the court activities. It should be noted that the German liberal presented the so-called "continental approach" to law and he is convinced that the courts are appointed primarily to apply the law to specific conditions, and not to settle disputes according to their own views. However, just like in many other areas of von Mohl's understanding of the state, there are specific exceptions to the rule. The most important, rational situation, where the court is able to create a legal norm that should be mentioned here, is a gap in applicable law. Von Mohl was convinced that every court is obliged to issue a judgment in the case submitted and it cannot justify its inactivity, e.g. by the lack of provisions relating to a specific case. Thus, the scholar came to the conclusion that, in a situation of a gap in law, the courts not only can, but are actually obliged to issue a ruling based on the legal norm they have created. What's more, von Mohl formulated something similar to a precedent, stating that a judgment issued in this way under the so-called "court habit" (*Gerichtsgebrauch*) becomes the norm for other courts of relevant jurisdiction. *Ibidem*, pp. 387–388. Also, Leon Petrażycki distinguished the so called "Law of court practice". More: L. Petrażycki, *Teoria prawa i państwa w związku z teorią moralności*, Vol. II, Warszawa 1960, pp. 387–398; S. Tkacz, *O „Pozytywności" i „Oficjalności" Prawa w Teorii Leona Petrażyckiego*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2005, No. 1, p. 83.

of the state in the strict sense, it was not always the case. Explanation of the history of this concept will thus allow us to avoid terminological ambiguities and will modernize the von Mohl's concept[19].

Initially, the concept of *Verfassung* in the German lands was broadly understood as a specific shape or condition of the state, which was composed of and influenced by various factors of historical development, as well as natural, nation-specific circumstances and laws. In this sense, therefore, the concept of *Verfassung* did not describe a specific, superior legal act of the state, but rather the overall system and conditions in which it operates. This understanding of the concept of *Verfassung* was in line with the old so-called "pre-constitutional" German science, for which it was not a normative term, but rather empirical, denoting a specific factual condition of a given state[20]. The term "constitution", in the end of the 17th century, was understood as an act issued by the emperor, regardless of its meaning and content. This historical understanding of the word constitution as the superior law was supplanted in the German area in the process of reception of modern constitutional concepts. At the turn of the seventeenth and eighteenth centuries, the word "constitution" began to approach its present understanding of the word *Verfassung*, meaning primarily a constitutional act, but also the form of the government of a given state. In this sense, therefore, each state had its own *Verfassung*, also understood as the state system, form or organization[21]. With the development and spread of postulates of the democratic Enlightenment movements, the notion of *Verfassung* – a constitution as a legal act has been consolidated. This legal act will make the power in the state no longer be based on largely unclear laws of nature or divine order, but instead will be limited on the basis of set and clear constitutional norms. The so-called "constitutionalization" of the rules functioning in the states of the German area falls in the 19th century. It was particularly in the first half of that century, when establishment of state constitutions (especially in the south of Germany) was perceived as a bourgeoisie's way to introduce rules that would limit the absolute power of kings and princes[22].

It is not surprising, therefore, that the concept of *Verfassung* is often present in the von Mohl's doctrine and it is given significant importance. It should be noted that he belongs to these of the German authors, who (by looking at Ameri-

[19] Translator of the Polish edition of the *Encyklopädie der Staatswissenschaften* translated the von Mohl's *Verfassung* as "organization". Aware of the ambiguity of this term (also meaning the then written constitutional act), A. Białecki decided to use the word "constitution" only when von Mohl spoke about the written act or group of constitutional acts. This view should be considered right and should be adopted: R. v. Mohl, *Encyklopedia Umiejętności Politycznych*, Vol. I–II, Warszawa 2003, p. 120.

[20] Ch.H. Schmidt, *Vorrang der Verfassung*…, p. 94.

[21] *Ibidem*, pp. 94, 95.

[22] A. Benz, *Der moderne Staat: Grundlagen der politologischen Analyse*, München 2008, pp. 135–136.

can and Western European models) not only postulated the hierarchical order of sources of law, but also were the precursors of understanding the term *Verfassung* (the constitution) as a source of law standing above others[23]. The concept of *Verfassung* that A. Białecki translated using the word "organization", appears in von Mohl already in the early *Constitutional Law of the Kingdom of Württemberg* of 1829 and 1831[24]. However, we find its most elaborate definition on the pages of the *Encyclopaedia*…:

"The organization is the sum of institutions and provisions defining a certain specific objective of the state, organizing and maintaining the main body intended for this purpose, describing in terms of form, boundaries and holders the state authority required for it, and finally regulating, in a fundamental way, the relations between participants of the state (both individuals and social circles) and the public"[25].

The analysis of the above definition allows us to conclude, that von Mohl perfectly fits the German trend of understanding the concept of *Verfassung* described above. *Verfassung* is not the today's written constitution, but a much broader concept, concisely speaking, meaning the fundamental nature of a given state. Under this concept, the scholar will understand the form to which the states will belong, and what their purpose will be[26]. Organization by von Mohl was in principle something general as well as permanent, defining the directions, which the state should follow[27]. Importantly, the above understanding of the concept of the Organization will not change throughout the entire period of his work[28]. May it be in the *Constitutional Law, International law, and Politics* or the last edition of the *Encyclopaedia*…, the Organization was always understood by von Mohl as the general principles and "content" of the state, determining its purpose, power relations and the position of citizens[29]. It is also worth noting that the Organization as a concept defining the essence and general principles of the system

[23] Ch.H. Schmidt, *Vorrang der Verfassung*…, p. 122.

[24] As Georg Jellinek later states, the *Constitutional law of the Kingdom of Württemberg* was a groundbreaking work, with extreme importance for the progress of the study of constitutional law in Germany: G. Jellinek, *Gesetz und Verordnung, Staatsrechtliche Untersuchungen auf Rechtsgeschichtlicher und Rechtsvergleichender Grundlage*, Freiburg I.B. 1887, p. 115. In this article, Erich Angermann noticed a turn to positive law in von Mohl: E. Angermann, *Robert von Mohl 1799–1875 Leben und Werk eines altliberalen Staatsgelehrten*, Neuwied 1962, p. 35.

[25] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 136; B. Granzow, *Robert von Mohls Gedanken zu einem parlamentarischen Regime auf berufsständischer Grundlage*, Heidelberg 1959, p. 88.

[26] R. v. Mohl, *Das Staatsrecht des Königreichs Württemberg*, Tübingen 1846, p. 3. The concept of „Organization" was used in the work to distinguish between its meaning and what von Mohl understood as a written constitution of the state.

[27] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 137.

[28] For the purposes of this article, the concept of "Organization" highlighted by von Mohl will always be capitalized to distinguish the usual understanding of the word.

[29] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, p. 408.

of a given state was, according to von Mohl, not reserved exclusively for the legal state. In fact, according to von Mohl, each state has an Organization, although it is expressed in various forms. According to the scholar, it was not necessary for the constitutional provisions to be included in one document (constitution) or even to be written down at all. Therefore, political principles can be found in various, larger numbers of legal acts or even in customary law[30].

When studying works of von Mohl we should be careful not to identify the above concept of the Organization, which is nonetheless considered to be something immaterial, one can say transcendent and more difficult to grasp, with a written constitutional act having a legal dimension. It is worth noting that differences also occur in terminology. Von Mohl never used the word Organization (*Verfassung*) to denote a constitutional act, always using the terms "constitutional act" (*Verfassungs-Urkunde*) or "written basic law" (*geschriebene Grundgesetz*) instead. Moreover, not all norms contained in the written constitutional act must belong to the Organization of the state and *vice versa*: "Not everything that is contained in a specific constitutional law belongs to the organization of the state, just as not the whole organization of the state is reflected in the constitutional act"[31].

The above view is reflected in von Mohl's belief that it is not a *sine qua non* condition for the written constitution to be contained in only one legal act. It can be said that the scholar presented a peculiar, approach, close to the Anglo-Saxon one, stating that there could be many constitutional acts "scattered throughout the entire legal order"[32]. Von Mohl concludes that the essence of rule of law includes the statement, that its institutions may only be established by common agreement. Von Mohl was in favour of establishing a constitution on the basis of a contract between the ruler and the people, but he also allowed a situation in which the constitution would be put in force (promulgated) without participation of representation. In both cases, however, it must define and protect the rights and obligations of both parties[33].

According to von Mohl, the objective of constitutional provisions contained in one or many acts of law was to resolve the most important political issues, i.e. a specific concretization of the ideas contained in the Organization of the state (and in no case may they contain legal norms reserved for its administration)[34].

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[30] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 137.

[31] R. v. Mohl, *Das Staatsrecht des Königreichs Württemberg*, Tübingen 1831, pp. 6, 9.

[32] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 145.

[33] R. v. Mohl, *Das Staatsrecht des Königreiches Württemberg*, Tübingen 1829, p. 86; J. Hähnle, *Die politischen Ideen Robert von Mohls. Ein Beitrag zur Geschichte des älteren süddeutschen Liberalismus*, Tübingen 1921, pp. 23–24.

[34] R. v. Mohl, *Das Staatsrecht des Königreichs Württemberg*, Tübingen 1831, pp. 6–7. Von Mohl himself, speaking of the "constitutional state" (*Das constitutionelle Staat*) distinguished four of its main features: first, exercise of power in accordance with the principles and objectives of the idea of the rule of law (of course, in the meaning of this concept by von Mohl), secondly, the exact

The provisions of constitutional acts refer, in von Mohl, to the objectives of the state, the form of its rule, the general obligations and rights of state power, as well as the civil and political rights of the state's residents, and their protection[35]. It may happen, however, that due to their great importance for the state, particular norms are introduced into such acts (e.g. relating to more specific issues, such as the judiciary)[36]. The most important assertion concerning the constitutional norms is that, in von Mohl, they gain the supreme position and the priority over all the remaining norms. The provisions of governmental (constitutional) acts are thus, in his works, characterized in that they include "higher order norms"[37]. The "constitutional act" is therefore the "first act of the state" (*das erste Gesetz des Staates*) and no "ordinary" act can contradict it[38].

It should not come as a surprise that von Mohl, as a representative of the liberal-constitutional wing of German science of the state, saw many advantages in adopting constitutional acts in states. First of all, it was about establishing higher, somewhat inviolable norms to protect citizens against the omnipotence of authorities. It is symptomatic, therefore, that it is the concept of constitution that connects, in von Mohl, as well as in all German liberalism, with the issues of fundamental and civil rights[39]. The adoption of a constitution in a state has many advantages, above all relating to the legal and political awareness of its citizens. Simple and general norms are easier to comprehend and assimilate than complicated and casuistic regulations (the postulate of generality and "simplicity" of law will be manifested in von Mohl with all power, when discussing the so-called "ordinary laws"). Nevertheless, it should not be forgotten, that German scholar, rational as always, also noticed the disadvantages and dangers potentially linked with the functioning of constitutional acts in a rule of law. This is, first and foremost, the abuse of general principles of systemic rank. Von Mohl was afraid that, by their nature the capacious and general constitutional norms could be abused and misinterpreted in accordance with a particular immediate interest (e.g. political). The conviction that the Organization of the state must correspond to the degree of development of the nation resulted in von Mohl's view that constitutional norms must also do so. According to von Mohl, imposing a constitution on

definition of the laws relating to the exercise power by constitutional act or acts, thirdly, the exact specification of the residents' demands in relation to the state authority, and finally, the introduction of institutions in the state that will protect citizens against violation of their rights by the state authority (establishment of a representative body). Furthermore, a constitutional state cannot be characterized by exceptional legal favoritism, e.g. of certain social groups. R. v. Mohl, *Die Geschichte und Literatur der Staatswissenschaften in Monographieen dargestellt*, Erlangen 1855, p. 268.

[35] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, p. 410.

[36] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 142.

[37] Ch.H. Schmidt, *Vorrang der Verfassung*…, pp. 158–161.

[38] R. v. Mohl, *Das Staatsrecht des Königreiches Württemberg*, Tübingen 1829, p. 81.

[39] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 142.

certain nations that would not stand in the relationship or not even result from their internal aspirations and conditions, would be unacceptable and would lead to detrimental results[40].

In view of the above, von Mohl's opinion is that the constitutional provisions must be altered in a situation, where they no longer meet the objectives of the state. The scholar is characterized by the belief that what seems intentional at a given moment may not always be appropriate after a given time interval and under different conditions. So, he reserved the right to amend the basic norms, although of course he was not in favour of frequent and rapid changes, which would prevent citizens from establishing strong ties with constitutional norms[41]. It is also worth mentioning that von Mohl foresaw the existence of a "constitutional court" (*Staatsgerichtshof*) in the state. Due to the fact that it is not possible to avoid constitutional disputes, collisions between the government and the representative body, there must be an institution in the state that will resolve these disputes[42]. Von Mohl saw the existence of such an institution as a "triumph of political education" and a harmonious embodiment of the idea of *Rechtsstaat*[43]. On the other hand, he believed that the best guarantee of observing and maintaining the constitutional order seemed to rest in the appropriately high character and level of political development of the nation, which should identify with its supreme constitutional act[44].

Acts, ordinances and their features

Ordinary acts of law (*einfache Gesetze*, *Gesetze*) are the second most important source of law in the state. When analyzing the issue of the role of an act in a legal state, one should first refer to determining the difference between the act and constitutional norms in von Mohl's thought. As already stated, the goal of organizational norms is to lay "general foundations", rules for the legal order. As part of these principles, the goals and limits of the state's operation are defined. The act, on the other hand, has the objective of developing and "filling in legal content" in those areas defined by the constitution. In addition, if something does not find a place in it, then the act may regulate it, but even then, it must comply with the "spirit" of higher-order norms[45]. From the above, the von Mohl's

[40] *Ibidem*, pp. 142–143.

[41] R. v. Mohl, *Das Staatsrecht des Königreiches Württemberg*, Tübingen 1829, p. 87; J. Hähnle, *Die politischen*…, p. 25.

[42] R. v. Mohl, *Das Staatsrecht des Königreiches Württemberg*, Bd. 1: *Das Verfassungsrecht*, Tübingen 1840, pp. 761–764.

[43] R. v. Mohl, *Die Verantwortlichkeit der Minister in Einherrschaften mit Volksvertretung*, Tübingen 1837, p. 25; J. Hähnle, *Die politischen*…, p. 26.

[44] *Ibidem*.

[45] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, p. 413.

postulate appears, stating that the laws must correspond to the "spirit and positive content of constitutional and fundamental laws", and their amendment may only take place in accordance with higher-order norms[46]. Thus, the first requirement regarding the act appears, i.e. its compliance with higher-order norms (systemic, constitutional). Therefore, in order to be legally binding act must comply with them, if it is not so, it is not binding[47].

Referring to the very definition of the term "Act" (*Gesetz*), it should be stated that despite the fact that it appears in many of von Mohl's works, its material dimension is always essentially similar. The act was understood by him first as a permanent, "imperative norm" (*eine befehlende Norm*), referring to specific issues of the life of the state and its citizens, issued by the relevant authority, and being its formally expressed will[48]. By means of acts, the rule of law state regulates those relations between residents that either do not create specific rights or obligations between them (for example, of a civil law nature) or when certain relations or factual conditions require legal clarification. In addition, the state uses acts to introduce and safeguard its own interests and aspirations[49]. Nevertheless, the act in von Mohl does not assume solely a formal nature, i.e. it is not merely a "formally expressed will of state authority"[50]. The scholar stated that the most important subject of the regulations of state legislation are all the orders and prohibitions of power, which refer to the rights of citizens, either by extending, or by limiting them. For this reason, he also demands that the act should be adopted in consultation with the representation of the nation (which, as will be demonstrated later, will distinguish an act from an ordinance)[51].

Turning to the discussion of the features that should characterize an act in the von Mohl's rule of law, we should remind the rational view of the scholar, referring to the very reason why the new act can be issued. The sole reason for that is the so called "real necessity"[52]. According to von Mohl, there is no place for any whims, anxiety or conceit in the legislation, also of those in power. Any law introduced without real necessity will not only be superfluous, but also harmful to the state[53]. Therefore, the law cannot be an abstract phenomenon created to satisfy unjustified

[46] *Ibidem*, pp. 145–146; Ch.H. Schmidt, *Vorrang der Verfassung*…, p. 161. On the issues of legislation in von Mohl: L. Łustacz, *Ustawa i rozporządzenie w klasycznej doktrynie francuskiej i niemieckiej*, Warszawa 1968, pp. 171–173.

[47] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, p. 386. Ch.H. Schmidt, *Vorrang der Verfassung*…, p. 123.

[48] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 144.

[49] *Ibidem*, pp. 144–145.

[50] I. Maus, *Entwicklung und Funktionswandel der Theorie des bürgerlichen Rechtsstaats* [in:] *Der bürgerliche Rechtsstaat*, ed. M. Tohipidur, Frankfurt am Main 1978, p. 21.

[51] R. v. Mohl, *Das Staatsrecht des Königreiches Württemberg*, Bd. 1: *Das Verfassungsrecht* (1840), pp. 67–68.

[52] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, pp. 419–420.

[53] *Ibidem*.

aspirations, or to regulate factual conditions that do not require it. Von Mohl is characterized by a logical and liberal view that if the state is to support the life goals of a particular nation, then its law (as an instrument for this) is to serve it. Therefore, certain rights must result from the main task of the state, which is to support the life goals of a particular nation[54]. Therefore, it should be stated that since for von Mohl the state is not a creation for itself, its law does not exist for itself either.

It is worth noting that in terms of determining the rules for introducing new laws, von Mohl did not stop at the inexplicable statement about the need for the so--called "real necessity". On the contrary, he made a fairly detailed analysis of when it appears in the state. The obvious postulate is that the new law should be introduced when applicable regulations are not sufficient, contain gaps, or other formal and material errors. It seems that much more important, also from the point of view of goals of the rule of law, is von Mohl's conviction that the generally understood development of society (or the economy, etc.) requires the introduction of a new law. One can see the scholar's conviction about the servant role of the state, which should follow the development of the nation, also by adopting appropriate regulations[55].

Referring to the features which, according to von Mohl, should characterize "good laws" we should note that it seems that the most important one (also from the point of view of historical context) is the feature of generality. According to him, the act must be a general rule. Both the subjective and the objective scope of the act should include as many as possible specific relations regulated by its respective provisions[56]. The conviction about the generality of the act is also revealed in the postulate that its content should be limited to "basic principles" (*Grundsätze*) while avoiding unnecessary casuistry. In other words, legislation should be as abstract as possible[57]. Thus, von Mohl should be considered an opponent of all casuistic approaches to law. He is characterized, above all, by the belief that it is not possible to regulate all possible factual conditions with law. In addition, he also states that the need for the most general provisions is also an improvement in the process of applying the law (especially on the side of the judge)[58]. It is the general nature that will distinguish von Mohl's act from decisions made in individual cases, be it by courts or by administrative bodies[59].

Further features of "good acts" distinguished by von Mohl include the postulate of appropriate time during which the new law will be introduced[60]. The postulate

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[54] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 151.

[55] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, p. 421.

[56] *Ibidem*, p. 428.

[57] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 153. Similarly: *idem*, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, p. 429.

[58] *Ibidem*, p. 430.

[59] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 146.

[60] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, p. 425. On the desirable characteristics of legislation in von Mohl: Z.A. Maciąg, *Kształtowanie zasad państwa demokratycznego, prawnego i socjalnego w Niemczech (do 1949 r.)*, Białystok 1998, pp. 95–97.

that the law should not contain orders or bans that the addressee of the norm will find impossible to meet (*Ad impossibilia non datur obligatio*) also appears in many passages of his works[61]. Importantly, these provisions cannot oblige to impossible things in a legal sense (incompatibility with higher-order norms), but also in factual one (according to von Mohl this constitutes the incompatibility of the provision with human nature)[62]. Therefore, an act may also contain only such norms that are enforceable (also by coercion)[63]. In addition, it is very important for the legislator to take into account customary law and customs, as well as the level of civilization of a given nation, in the lawmaking process[64].

The demand for equality of all residents of the state before the law, is connected with the demand that the act should be equally binding for all residents of the state. It should be remembered that equality before the law forms one of the basic features of "modern rule of law" in von Mohl[65]. However, what is very important for the scholar, i.e. the postulate of equality before the law does not mean that one cannot create (when the need arises) particular provisions, referring, for example, to specific branches of the state economy. The principle of equality says that all who are under the rule of a given law are to be treated equally[66].

Extremely important, this time from the point of view of the state, is von Mohl's belief that all legislation should be consistent, and comply with the principles arising from the general idea on which it is based. Therefore, acts must "go in the same direction", that is, not only they must not introduce contradictory regulations, but they are also to reflect the most important goals and the idea of a given state[67]. The scholar believed that when individual parts of the legislation in the state "move in other directions" (they are not consistent), it will result in disputes regarding its role and responsibilities[68]. Therefore, the above also implies the postulate that all laws should be in line with the spirit of the system, which will also ensure the homogeneity of all state activities[69].

The law should be stable and function as long as possible. This does not mean, however, that von Mohl was an opponent of introducing changes in legislation. He accepted them, but argued for the widest possible impediment to their introduction, which would protect the state against recklessness, *ad hoc* and careless-

[61] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, pp. 155, 148. Similarly: *idem*, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, p. 431.

[62] *Ibidem*, p. 433.

[63] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 145.

[64] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, p. 386; *idem*, *Encyklopädie der Staatswissenschaften*, p. 153.

[65] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, p. 434.

[66] *Ibidem*, p. 435. K.S. Zachariae believed similarly. More: K.S. Zachariae, *Vierzig Bücher vom Staate*, Bd. 4, Heidelberg 1840, pp. 23–25.

[67] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, p. 436.

[68] *Ibidem*, p. 437.

[69] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 151.

ness in the introduction of a new law[70]. Von Mohl's objection to the simple process of reception of foreign law should also be raised here (even if certain regulations proved successful in another state). The law must comply with the factual conditions in the state, where it is to operate. Due to the fact that it rarely happens that identical factual conditions occur, a simple reception may be, according to von Mohl, a mistake[71].

A liberal, but also rational view is the requirement that acts should not violate the rightly and justly acquired private rights (e.g. property). Otherwise, the certainty and reliability of the entire legal order would be destroyed. On the other hand, the scholar allowed certain exceptions in which, in the name of a higher interest (e.g. that of a community or entire state), individual rights could be limited. The violation of private law by the state can therefore only occur if there is a legitimate and important social interest, which not implemented, would cause great harm to the community, and secondly, if the violation of private law is covered by compensation. Acts of law should also be characterized by "appropriateness of measures". Under this concept von Mohl understood the desire to ensure that in every single case the actions of the state, and the means applied, corresponded to the benefits that can be achieved. He therefore advocated that acts should not regulate subordinate issues by multiplying the costs of introducing the institutions they set up. Therefore, the implementation of an act may not generate costs exceeding the expected benefits thereof[72].

Many interesting postulates that demonstrate the liberalism of von Mohl relate to the formal dimension of acts. He listed five conditions for the formal correctness of an act, stating that it should be understandable and not giving raise to any doubt. The act should reflect the actual will of the legislator and be concise, and its content should be specified and divided in a way that facilitates its use. It should also utilize an appropriate language[73].

Referring to the first postulate, it should be pointed out that, according to von Mohl, it would be unfair to demand that citizens obey an act that is incomprehensible to them and raises doubts (although of course we are talking about citizens with general education enabling them to read specific legal norms)[74]. Undoubtedness of the act means that its provisions must be explicit and devoid of double meaning. One word should always mean one thing, and sentences should be simple, also in grammatical terms[75]. The above postulate is connected with von Mohl's liberal belief relating to the language of the act. The scholar is

[70] *Ibidem*, p. 148.

[71] *Ibidem*, p. 151.

[72] *Ibidem*, pp. 149, 153.

[73] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, p. 438.

[74] *Ibidem*.

[75] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 153; *idem*, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, pp. 441–442.

strongly convinced that the act is not only intended for judges, but also for "ordinary" citizens. Therefore, its language must be as understandable as possible for them, and not for just those, who have relevant education in this field. Hence the acts should use, to the greatest possible extent, utilize commonly used vocabulary, and all specialist terms should be explained[76].

As already noted, the act should determine the actual will of the legislator. It is primarily about avoiding situations in which, through the messy or unprofessional coining of law, norms establishing goals other than its intentions are introduced into the legal order. Therefore, both the subjective and objective scope of the act must be appropriate. This means that it cannot regulate too much or too little, and it cannot contain provisions relating to other factual conditions, functioning within different subjective and objective scopes[77]. Therefore, an act may not express less than the legislator wanted to regulate. On the other hand, its scope cannot be too wide.

The act should also be as concise as possible. Of course, the volume of the act is a relative value, because – according to von Mohl – its scope determines the scope of the subject to be regulated. What the scholar meant was not the unjustified shortening of content of acts, but rather the avoidance of excess repetitions. The act should properly regulate specific issues using as few concise sentences as possible[78]. The act formulated in this way is to be absorbed faster in the legal awareness of citizens and will be more readily understandable[79]. What is revealed again, is von Mohl's belief that a broad knowledge of law is indispensable.

The appropriate scope of the act is of great importance to von Mohl both for its proper understanding and in order to facilitate its application. Therefore, an act should relate only to facts of a given type[80]. It should regulate them comprehensively so that there is no need to search for relevant provisions in other acts of law. On the other hand, if there are different subjective regulations in the act, they should be clearly separated in it. The act should be edited in such a way that the most general issues appear in its beginning, to provide the basis for more specific issues, which are included in further parts of the legal act[81].

As already mentioned, the so-called "common ordinances and provisions" formed the lowest rank of Mohl's hierarchy of law. The essence of the ordinances is their content of orders implementing specific provisions for acts of higher order. Therefore, they perform strictly executive function in relation to the acts

[76] Von Mohl put it briefly, stating that a code cannot speak the language of philosophers. *Ibidem*, pp. 440, 449; R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 154.

[77] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, p. 443.

[78] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 154.

[79] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, p. 444.

[80] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 154.

[81] R. v. Mohl, *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, pp. 446–448.

with which they obviously cannot contradict. It should be emphasized that in von Mohl ordinances differ from acts in that they do not require the cooperation of citizens (as was the case with acts of law)[82]. This is primarily due to the subordinate function of the ordinances, which cannot introduce new norms, but only regulate their implementation. Therefore, their issue was, according to von Mohl, vested solely in the state authorities, and also – in certain cases – in their authorized bodies. Interestingly, the right to issue them can be both provided for in an act, and then it will have a specific scope, or it may arise as a logical necessity to comply with the provisions of an ordinary act[83].

It should be noted that the understanding of acts and ordinances by von Mohl is symptomatic for the entire so-called "early constitutional doctrine" of the rule of law in Germany. One of the main aspirations at the time was limiting executive (royal) power, connected with a relatively large margin of actions being reserved for the legislative branch. The above described trend is reflected in the analysis of differences between the act and the ordinance. While the scope of the former is virtually unlimited, an ordinance needs to be justified to be introduced. However, its task is only to comply with acts, while prohibiting the introduction of new legal norms (which shall be reserved for the act)[84]. The von Mohl's belief that the ordinance should only execute acts corresponds to the contemporary dominant trend in the liberal doctrine in form of the belief that government activity should be based only on compliance with acts[85]. It is worth noting, however, that von Mohl was not consistent in his views. While the above understanding of the ordinance is appropriate for him during the *Vormärz* period, it begins to change later. This is evidenced by the conviction, explained in the pages of the third edition of the *Polizeiwissenschaft nach den Grundsätzen des Rechtsstaates* of the need for the existence, within the legal system, of "statements" of state authorities that are unrelated to the legislative branch and the acts of law, relating to the police activities of the state (so called "police ordinances", *Polizeiverordnungen*)[86]. In special cases (and von Mohl did not mean periods, when the legislative body is not able to assemble here), the government is entitled to issue regulations that have the force of law, where the activities of legislative bodies in the field of police activity are not appropriate[87].

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[82] R.-J, Grahe, *Meinungsfreicheit und Freizügigkeit. Eine Untersuchung zum Grundrechtsdenken bei Robert von Mohl*, Münster 1981, p. 84.

[83] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 146.

[84] R. v. Mohl, *Das Staatsrecht des Königreiches Württemberg*, Bd. 1: *Das Verfassungsrecht* (1840), p. 199.

[85] E. Angermann, *Robert von Mohl*…, p. 147.

[86] R. v. Mohl, *Die Polizeiwissenschaft nach den Grundsätzen des Rechtsstaates*, Tübingen 1866, pp. 45–47.

[87] E. Angermann, *Robert von Mohl*…, pp. 149–150. L. Łustacz, *Ustawa i rozporządzenie*…, p. 173.

Conclusions

The analysis presented above necessitates that we state that Robert von Mohl represented many of the typical features of his era, when it comes to the legal order of the *Rechtstaat* state. Not only within the meaning of the constitution, but above all in the understanding of the concept of law by this scholar, we can observe the most important features of German liberalism, as well as the effects of tensions between the broadly understood state and society during the *Vormärz* period[88].

Organization (*Verfassung*) is located at the very top in hierarchy of sources of law, which, according to von Mohl, usually adopts the form of a written constitution or group of constitutional acts. The "modern rule of law" must be based on constitutional norms, which are higher-order norms, that are difficult to change, permanent and guaranteeing, above all, civil rights, and at the same time shape citizens' relations with the authorities. So, one can clearly see the liberal postulate to protect citizens (bourgeois) against the arbitrariness of German princes or kings. However, it should be noted that von Mohl did not explicitly postulate institutionalized protection against situations of violation of the constitution, but only an option for a citizen to refuse to obey such laws. Moreover, in a situation where acts violate legal principles not included in the constitution, the citizen has, according to von Mohl, either to comply with such laws or to break the law, having to bear of all possible consequences thereof[89].

We should agree with the view that the early liberal German understanding of the act (as presented by von Mohl) forms the apex of the understanding of this concept in accordance with the principles of the *Rechtsstaat*. An act established in cooperation with the people, was to be a general and universal norm (which according to von Mohl was particularly important in the rule of law)[90]. The complicity of the national representation was to protect the principle of freedom of the citizen, while the principle of generality and universality was to protect against particular state attacks on the sphere of civil and social liberties. The act in accordance with the *Rechtsstaat* principle is the result of the general will expressed in the state, and the rule of such act means the rule of civil liberties[91].

It is worth noting that von Mohl's postulate of the generality and universality of the act is also connected with the previously expressed equality before the law principle forming part of the rule of law. An act may contain only norms equal for

[88] R.-J. Grahe, *Meinungsfreicheit und Freizügigkeit. Eine Untersuchung zum Grundrechtsdenken bei Robert von Mohl*, Münster 1981, p. 81.

[89] R. v. Mohl, *Das Staatsrecht des Königreiches Württemberg*, Bd. 1: *Das Verfassungsrecht*, Tübingen 1840, pp. 392–393; I. Maus, *Entwicklung und Funktionswandel*…, p. 23.

[90] U. Karpen, *Die geschichtliche Entwicklung des liberalen Rechtsstaates, Vom Vormärz bis zum Grundgesetz*, Mainz 1985, pp. 66–67; E.-W. Böckenförde, *Staat. Staat, Gesellschaft, Freiheit, Studien zur Staatstheorie und zum Verfassungsrecht*, Frankfurt am Main 1976, pp. 69, 86.

[91] *Ibidem*, p. 70.

everyone, i.e. general and abstract norms, because equality before the law is only possible with acts of general and universal content[92]. As von Mohl stated: "These general norms gain great importance precisely in the rule of law, because it is in it that the participants of the state experience changes and determination of their legal relationship not through arbitrary orders of human or supernatural authority, but solely through general laws that bind everyone on an equal basis"[93].

The act is the basis for the further operation of the state administration. It is also worth remembering that, in von Mohl, the differences between an act and a regulation reflect the then functioning conflict between the authority (monarch) and the people (representative body). "Important" legal norms such as acts (as opposed to regulations) should only be established in consultation with the people, which was also to be the way to secure individual civil liberties[94].

It would seem that based on the study of the triad of sources of law in the state, it is the state that, for von Mohl, is the source of all law, so that apart from positive law there cannot be other norms. However, in addition to positive laws, von Mohl also lists the customary law as source of law[95]. One should also remember about the so-called "philosophical constitutional law" and its regulations, coexisting with positive law. However, we cannot resist the impression that the scholar's explanation of the relationship between these two legal orders and their possible collisions remains blurred and unclear, which only confirms von Mohl's statement that, in the end, "a rational reader is able to find the truth"[96]. However, agreeing with Erich Angermann, we cannot deny von Mohl that in his understanding of the sources of law, and their hierarchy, he was basing on the analysis of real conditions in a respective state, and not on abstract concepts[97].

We find further evidence of von Mohl's reliance on experience and empiricism in his belief that, in addition to written law, also the custom and activity of courts can be the source of law in the state. One should also remember about the philosophical constitutional law and about the fact that von Mohl has not quite clearly defined the relationship between the written order and the whole of the aforementioned rest. There is no doubt, however, that the basis of the rule of law's activity should be the written law, which is subject to extensive analysis of von Mohl. The rooting of the scholar in liberal doctrine is further proved by his conviction that constitutional norms should be at the top of the hierarchy of sources of law. Higher-order norms,

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[92] U. Karpen, *Die geschichtliche Entwicklung*…, p. 68.

[93] R. v. Mohl, *Das Staatsrecht des Königreiches Württemberg*, Bd. 1: *Das Verfassungsrecht*, Tübingen 1840, p. 193.

[94] R.-J. Grahe, *Meinungsfreicheit und Freizügigkeit*…, pp. 84–85.

[95] H. Schmitz, *Die Staatsauffassung Robert von Mohls unter Berücksichtigung der verfassungs-geschichtlichen Entwicklung und des positivistischen Staatsdenkens*, Köln 1965, pp. 97–98.

[96] R. v. Mohl, *Encyklopädie der Staatswissenschaften*, p. 192; P. v. Oertzen, *Die soziale Funktion des staatsrechtlichen Positivismus*, Frankfurt am Main 1974, pp. 104–105.

[97] E. Angermann, *Robert von Mohl*…, p. 116.

difficult to change and guaranteeing civil liberties, should protect citizens against arbitrary decisions of authorities. The "ordinary" act of law, standing lower in the hierarchy, should be an overall and general norm, and also a norm created in cooperation with the people. The postulate of the generality and universality of the act was also to fulfill the principle of equality before the law prevailing in the rule of law. In contrast, the relationship between an act and a ordinance well illustrates the conflict between the monarch and the people at that time. The act of law, comprehensively regulating certain obligations of citizens, had to be created in consultation with the representation of the people. The ordinance, being only an implementing act, could be issued by the monarch autonomously.

Bibliography

Angermann E., *Robert von Mohl 1799–1875 Leben und Werk eines altliberalen Staatsgelehrten*, Neuwied 1962.

Benz A., *Der moderne Staat: Grundlagen der politologischen Analyse*, München 2008.

Böckenförde E.-W., *Staat. Staat, Gesellschaft, Freiheit, Studien zur Staatstheorie und zum Verfassungsrecht*, Frankfurt am Main 1976.

Dąbrowski K., *Ewolucja pojęcia policji w kontekście genezy żandarmerii w Niemczech*, „Annales Universitatis Mariae Curie-Sklodowska, Sectio G (IUS)" 2016, Vol. XXV, 3.

Gmür R., *Savigny und die Entwicklung der Rechtswissenschaft*, Münster 1962.

Grahe R.-J., *Meinungsfreicheit und Freizügigkeit. Eine Untersuchung zum Grundrechtsdenken bei Robert von Mohl*, Münster 1981.

Granzow B., *Robert von Mohls Gedanken zu einem parlamentarischen Regime auf berufsständischer Grundlage*, Heidelberg 1959.

Hähnle J., *Die politischen Ideen Robert von Mohls. Ein Beitrag zur Geschichte des älteren süddeutschen Liberalismus*, Tübingen 1921.

Jellinek G., *Gesetz und Verordnung, Staatsrechtliche Untersuchungen auf Rechtsgeschichtlicher und Rechtsvergleichender Grundlage*, Freiburg I.B. 1887.

Karpen U., *Die geschichtliche Entwicklung des liberalen Rechtsstaates, Vom Vormärz bis zum Grundgesetz*, Mainz 1985.

Łustacz L., *Ustawa i rozporządzenie w klasycznej doktrynie francuskiej i niemieckiej*, Warszawa 1968.

Łuszczyńska M., *Prawo natury a prawo stanowione- dwa antagonistyczne ujęcia filozofii prawa*, „*Annales UMCS Sectio G (Ius)*" 2005–2006, Vol. LII/LIII.

Maciąg Z.A., *Kształtowanie zasad państwa demokratycznego, prawnego i socjalnego w Niemczech (do 1949 r.)*, Białystok 1998.

Maus I., *Entwicklung und Funktionswandel der Theorie des bürgerlichen Rechtsstaats* [in:] *Der bürgerliche Rechtsstaat*, ed. M. Tohipidur, Frankfurt am Main 1978.

Mohl R. v., *Das Staatsrecht des Königreiches Württemberg*, Tübingen 1829.

Mohl R. v., *Das Staatsrecht des Königreiches Württemberg*, Bd. 1: *Das Verfassungsrecht*, Tübingen 1840.

Mohl R. v., *Das Staatsrecht des Königreichs Württemberg*, Tübingen 1831.

Mohl R. v., *Das Staatsrecht des Königreichs Württemberg*, Tübingen 1846.

Mohl R. v., *Die Polizeiwissenschaft nach den Grundsätzen des Rechtsstaates*, Tübingen 1866.

Mohl R. v., *Die Verantwortlichkeit der Minister in Einherrschaften mit Volksvertretung*, Tübingen 1837.

Mohl R. v., *Encyklopädie der Staatswissenschaften*, Tübingen 1872.

Mohl R. v., *Encyklopedia Umiejętności Politycznych*, Vol. I–II, Warszawa 2003.
Mohl R. v., *Staatsrecht, Völkerrecht, Politik*, Bd. 2, *Politik*, Bd. 1, Tübingen 1862.
Oertzen P. v., *Die soziale Funktion des staatsrechtlichen Positivismus*, Frankfurt am Main 1974.
Opałek K., Wróblewski J., *Niemiecka szkoła historyczna w teorii prawa*, „Przegląd Nauk Historycznych i Społecznych" 1954, Vol. V.
Petrażycki L., *Teoria prawa i państwa w związku z teorią moralności*, Vol. II, Warszawa 1960.
Schmidt Ch.H., *Vorrang der Verfassung und konstituionelle Monarchie: eine dogmengeschichtliche Untersuchung zum Problem der Normenhierarchie in den deutschen Staatsordnungen im frühen und mittleren 19. Jahrhundert (1818–1866)*, Berlin 2000.
Schmitz H., *Die Staatsauffassung Robert von Mohls unter Berücksichtigung der verfassungsgeschichtlichen Entwicklung und des positivistischen Staatsdenkens*, Köln 1965.
Sobota K., *Das Prinzip Rechtsstaat*, Tübingen 1997.
Szwarc W., *Zarys ewolucji pojęcia „policji" w monarchii pruskiej w XVIII i XIX w.* [in:] *Wybrane problemy teorii i praktyki państwa i prawa*, eds. H. Groszyk, L. Dubel, Lublin 1986.
Tkacz S., *O „Pozytywności" i „Oficjalności" Prawa w Teorii Leona Petrażyckiego*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2005, No. 1.
Uhlenbrock H., *Der Staat als juristische Person: Dogmengeschichtliche Untersuchung zu einem Grundbegriff der deutschen Staatsrechtslehre*, Berlin 2000.
Wojtyszyn R., *Szkoła prawa natury od Hugona Grocjusza do Johna Locke'a*, „Studia Erasmiana Wratislaviensia Wrocławskie Studia Erazmiańskie. Zeszyt Naukowy Studentów, Doktorantów i Pracowników Naukowych Uniwersytetu Wrocławskiego", 2007.
Zachariae K.S., *Vierzig Bücher vom Staate*, Bd. 4, Heidelberg 1840.
Zimmermann G., *Die Deutsche Polizei im neunzehnten Jahrhundert*, Bd. 1, Hannover 1845.

Summary

Presented article is an attempt to analyze Robert von Mohl's views regarding the formal dimension of his rule of law idea (*Rechtsstaat*). In the first part, the article analyzes relations between the written law and customary law in the thought of discussed German scholar. Next it discusses the notion of constitution in state, also when it comes to its definitions. The article is finished by the issues of an act and an ordinance in von Mohl's thought. Firstly it discusses the very notions of these normative acts. Secondly it analyzes the features that, according to von Mohl, should be fulfilled by them. Presented article proves not only the cohesion of von Mohl's view in terms of rule of law's formal dimension. It also proves that his views reflect the aspirations of German 19th century bourgeoisie. However, the article emphasize that von Mohl didn't fully solve certain problems i.e. mutual relations between written and customary law.

Keywords: Rechtsstaat, rule of law, *Verfassung*, constitution, Robert von Mohl

IDEA PAŃSTWA PRAWNEGO (*RECHTSSTAAT*) WEDŁUG ROBERTA VON MOHLA

Streszczenie

Przedstawiony artykuł stanowi próbę analizy poglądów Roberta von Mohla dotyczących formalnego wymiaru jego idei państwa prawnego (*Rechtsstaat*). W części pierwszej dokonano analizy relacji między prawem stanowionym i prawem zwyczajowym w myśli tego niemieckiego uczonego.

Następnie przedstawiono jego postrzeganie problemu konstytucji w państwie, również w kontekście stosowanych przez niego na ustawę zasadniczą określeń. Rozważania kończy omówienie kwestii dotyczących ustawy i rozporządzenia w myśli von Mohla. Po pierwsze, odnosi się ono do samych pojęć tych aktów normatywnych. Po wtóre, analizie poddano wymogi, jakie według von Mohla winny one spełniać. W niniejszym artykule dowiedziono nie tylko spójności poglądów von Mohla na kwestie szeroko rozumianego prawa. Wskazano również, że jego poglądy były odzwierciedleniem dążeń tworzącej się w XIX w. niemieckiej burżuazji. Z drugiej strony zwrócono uwagę na problemy nierozwiązane do końca przez uczonego. Mowa tu przede wszystkim o wzajemnych relacjach między prawem zwyczajowym a pisanym.

Słowa kluczowe: Rechtsstaat, państwo prawne, *Verfassung*, konstytucja, Robert von Mohl

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POLICE COOPERATION DETERMINANTS WITH THE NATIONAL LABOUR INSPECTORATE

Introduction

Cooperation of the Police with the National Labour Inspectorate in the prevention of crimes against the rights of people performing paid work, offenses against the rights of employees, as well as other offenses related to the performance of paid work have not been the subject of a separate study so far. The issue of this cooperation is important for identifying the authorities obliged to combat these offences and delinquencies by the authorities participating in this proceeding and for determining the basis and scope of their cooperation.

Cooperation is a conceptual category of interest to many scientific disciplines and branches of law. According to the Polish language, it means joint action, related to another entity, aimed at contributing to the achievement of the intended result[1]. On the basis of administrative education, the obligation of cooperation between administration bodies is repeatedly raised, with the indication that no actions aimed at implementing specific assumptions of various nature, including political ones, cannot do without cooperation. This cooperation is assigned to specific plans for achieving common goals through the division of tasks and competences, the zone of planning, financing, effectiveness and efficiency as well as state supervision[2]. However, treating the cooperation of state entities as an obligation, it is recognized as a legal principle enabling the implementation of objectives by state organizational units in accordance with their vocation[3]. The creator of praxeology, T. Kotarbiński, referring to public administration in praxeological terms as an organization as a whole, distin-

[1] See: J. Bralczyk, *Słownik 100 tysięcy potrzebnych słów*, Warszawa 2005, p. 929.

[2] See: e.g. E. Knosala, *Zarys nauki administracji*, Warszawa 2006, p. 141 n.; I. Łukasiewicz, *Prawne uwarunkowania skuteczności działań administracji państwowej*, Lublin 1990, p. 15 n.

[3] See: S. Biernat, *Działania wspólne w administracji państwowej*, Wrocław–Warszawa–Kraków–Gdańsk 1979, p. 78.

guished in it three parts conditioning its success as a whole, and that is: a common accepted goal, cooperation on the background of this goal and exchange of information within cooperation[4]. In the science of administrative law, cooperation is attributed to the nature of the joint action of at least two bodies that are not mutually independent, which manifests itself as a set of actions aimed at achieving a specific state through joint venture or legal action. The essence of cooperation is voluntary, because each public entity entrusted with the implementation of specific tasks by law may perform them independently or jointly with other entities, unless the obligation to cooperate results from the adopted constitutional law or procedural provisions[5]. Hence, collaboration can take many forms depending on what its source is[6].

When addressing the topic of cooperation, it should be emphasized that it was raised in the Preamble to the Constitution of the Republic of Poland of 2 April 1997[7], in which, among others, the cooperation of the authorities was associated with the implementation of fundamental rights for the State.

Although the normative nature of the preamble to the Constitution cannot be accepted, its specific role in the interpretation of the provisions of this Constitution cannot be excluded. The content of the preamble contains provisions which have been developed in specific provisions of the Constitution, such as cooperation[8].

The normative definition of the cooperation principle however, is dealt with, among others, in legal sources of statutory hierarchy. An example would be Art. 7b of the Act of 14 June 1960 Code of Administrative Procedure[9] according to which public administration bodies cooperate with each other to the extent necessary to thoroughly clarify the factual and legal status of the case, or the Act of 8 March 1990 on communal self-government[10], the Act of 5 June 1998 on county self--government[11], the Act of 5 June 1998 on voivodship self-government[12], which in relation to the scope of activities and tasks indicate cooperation with specific

[4] T. Kotarbiński, *Traktat o dobrej robocie*, Wrocław–Warszawa–Kraków–Gdańsk 1973, p. 74.

[5] See also: M. Wierzbowski, M. Grzywacz, J. Piecha, *Podstawowe pojęcia teoretyczne w nauce prawa administracyjnego* [in:] *Prawo administracyjne*, ed. M. Wierzbowski, Warszawa 2017, pp. 83–85.

[6] See in a broader sense: N. Muszyński, *Współdziałanie organów bezpieczeństwa i porządku publicznego z organami finansowymi w zakresie wykrywania i zwalczania wykroczeń skarbowych* [in:] *Współdziałanie organów bezpieczeństwa i porządku publicznego w zakresie wykrywania wykroczeń i ścigania ich sprawców*, Lublin 2012, p. 11 n.

[7] Dz.U. No. 78, Item 483 as amended.

[8] See: W. Kręcisz, W. Orłowski, *Przygotowanie, przyjęcie i ogólna charakterystyka Konstytucji z 1997 r.* [in:] *Polskie prawo konstytucyjne*, Lublin 2001, p. 113; W. Brzozowski, *Współdziałanie władz publicznych*, „Państwo i Prawo" 2010 No. 2; E. Olejniczak-Szałowska, *Prawny obowiązek współdziałania Policji z innymi służbami w sferze ochrony bezpieczeństwa i porządku publicznego* [in:] *Policja. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019, p. 34 n.

[9] Dz.U. 2020, Items 256, 695.

[10] Dz.U. 2020, Item 713.

[11] Dz.U. 2019, Items 511, 1571.

[12] Dz.U. 2019, Items 512, 1571, 1815.

entities[13]. Cooperation according to the Polish language is also, inter alia, activities carried out jointly by specific entities.

When defining public administration as an organization from a systemic point of view[14], it should be noted that the system obliges cooperation or other cooperation between its entities, which cooperation is also an indispensable element of management aimed at effective achievement of goals. The multitude of goals that public administration has to meet allows for their classification from the point of view of the hierarchy of protected values among which security in its various types and ensuring certain freedoms and rights are special values. This is expressed in the basic law in many of its regulations, e.g. contained in Art. 5, 24, 66, 68, which are related to the topic taken up.

The obligation of cooperation or collaboration arises from many statutory provisions, which, while defining the tasks of a specific public entity, oblige simultaneously to perform tasks by entities with different organizational statuses, scopes of activity.

An administrative form is a special form of non-imperative forms of administration enabling, among others, joint performance of tasks by entities performing public administration. It provides for joint performance of tasks or transfer of certain tasks to another entity. Most often, the subject of agreements, which is characterized by equality of parties, is the cooperation of specific entities of public administration with each other, or with certain other entities on the basis of a consistent declaration of will of entities containing them[15]. These agreements are attributed to the nature of a public-law contract for which the conclusion of a sufficient legal basis is the general competence rules of entities interested in cooperation. In the current state however, there are no legal regulations regarding the conclusion of agreements, which causes many doubts related to their approval and implementation[16].

The legal status of the Police[17] and the National Labour Inspectorate as public entities undertaking bilateral activities

According to the provision contained in Art. 1 of the Act of 6 April 1990 on the Police, the Police are an armed formation serving the society and intended to

[13] J. Bralczyk, *Słownik 100 tysięcy*…, p. 929.

[14] More: S. Wrzostek, *System: administracja publiczna. Systemowe determinanty nauki administracji*, Lublin 2008, p. 43 n.

[15] More: Z. Cieślak, *Porozumienie administracyjne*, Warszawa 1985, p. 125; I. Wyporstka-Frankiewicz, *Publicznoprawne formy działania administracji o charakterze dwustronnym*, Warszawa 2010, p. 56; M. Wierzbowski, A. Witkowska, *Prawne formy działania administracji publicznej* [in:] *Prawo administracyjne*, ed. M. Wierzbowski, Warszawa 2017, p. 293 n.; E. Ura, *Prawo administracyjne*, Warszawa 2015, p. 128 n.

[16] More: *Prawo administracyjne*, ed. A. Błaś, Wrocław 1996, 1997, pp. 305–307; J. Boć, *Prawo administracyjne*, Wrocław 2000, p. 334.

[17] Dz.U. 2020, Item 360.

protect people's security and to maintain public safety and order[18]. It also falls under the concept of uniformed services, which are responsible for ensuring a certain type of security and order, and is also one of the specialized public entities belonging to the system of administrative bodies competent in matters of security and public order protection[19].

In the study of administrative law, the Police within the meaning of the Act on the Police referred to as the State Police for performing many administrative tasks, which result not only from substantive administrative law, is also included in the administrative police. Activities of public administration in states of various threats is nowadays identified with the concept of this police[20].

The Act on the Police, indicating in Art. 1, item 2, the basic tasks of the Police do not treat this indication as profound. In the provision of paragraph 3 of this article, it states that it also carries out tasks arising from the provisions of European Union law and contracts and international agreements on the terms and to the extent specified therein.

By analyzing Art. 1 of the Act on the Police, its special role should be noted in ensuring security and public order, which determines the safety of people through service to society. In this respect, the Police, as one of the public entities, ensuring this security and public order to a fundamental extent at the same time implements the constitutional obligations of the state in this respect.

The term public security and public order appearing in normative acts have not yet been legally defined. Therefore, the definitions that have taken place within this term should be included in the category of legal language and not legal. According to e.g. E. Ura, security means "a state in which all understood individual citizens living in the state and society are not in danger, no matter what their sources are". According to E. Ura, this security cannot be treated as an unchanging state[21]. Public order in terms of W. Kawka, as well as security "are certain positive states prevailing in a social organization, the behavior of which guarantees the avoidance of specific damage, by the whole organization and its individual members"[22].

The Act on the Police does not contain provisions on the Police cooperation with the National Labour Inspectorate, which is a special supervisory and control body due to the tasks entrusted to it, scope of activities and powers in, inter alia, occupational health and safety, which safety is one of the types of constitutionally protected safety. This special position of the National Labour Inspectorate in

[18] More: M. Liwo, *Służby mundurowe jako kategoria języka prawniczego*, „Przegląd Prawa Publicznego" 2015, No. 2, p. 9 n.

[19] More: S. Pieprzny, *Administracja bezpieczeństwa i porządku publicznego*, Rzeszów 2012, p. 90.

[20] See: Z. Leoński, *Materialne prawo administracyjne*, Warszawa 2006, p. 208 n.

[21] E. Ura, *Pojęcie ochrony bezpieczeństwa i porządku publicznego*, „Państwo i Prawo" 1974, No. 2, p. 76 n.

[22] W. Kawka, *Policja w ujęciu historycznym i współczesnym*, Wilno 1939, p. 4.

the system of control and supervision bodies over working conditions means that the other bodies of this supervision and control body are complementary to the tasks of this inspection. A similar situation also applies to the Police and other authorities involved in ensuring a certain type of security and public order. The provision of the Act on the Police, in which the National Labour Inspectorate is listed Art. 7, in which an instruction was given to the Police Commander-in-Chief to determine the specific conditions of safety and hygiene of the service after consulting the National Labour Inspectorate. The content of this provision, which is a form of acquiring knowledge in the indicated field, indicates the obligation to specify the above conditions.

It should be noted, however, that the used word "consultation" is not as precise as expected and raises doubts as to whether it is seeking consultation, or expressing a non-binding position by the National Labour Inspectorate, or is a specific form of cooperation.

According to aArt. 1 of the Act of 13 April 2007 on the National Labour Inspectorate[23], it is a body subject to the Diet appointed to supervise and control compliance with labor law, in particular compliance with the provisions and principles of occupational health and safety, as well as provisions regarding the legality of employment and other gainful employment in scope specified in the Act.

Due to direct subordination to the Diet, this inspection is assigned a special status as a body having partly the character of a state control body and partly an administrative body (however, its membership in administrative bodies is disputable) and the status of the supreme body due to independence from the government[24],

The special status of the National Labor Inspectorate and the wide scope of its tasks result in the obligation to cooperate with this inspection of the indicated authorities in the scope specified in the Regulation of the Prime Minister of 28 December 2007 on the mode and forms of cooperation of certain bodies with the National Labour Inspectorate in the field of occupational health and safety and the legality of employment[25]. Cooperating entities in the field of security and occupational hygiene are indicated in the regulation, supervisory and control bodies, special inspections, uniformed services, maritime and inland navigation authorities, and as regards the legality of employment, voivodes, foremen and presidents of cities with county rights, the Social Insurance Institution, tax administration bodies, marshals of voivodships and also uniformed services indicated.

In relation to the Police, cooperation applies to matters related to the legality of employment, including foreigners, as part of specific activities, which the Regulation sets out, for example, the use of the wording "in particular".

[23] Dz.U. 2019, Item 1251.

[24] See: I. Zimmermann, *Prawo administracyjne*, Warszawa 2018, pp. 242–243, 518–519; M. Liwo, *Utworzenie i status prawny Państwowej Inspekcji Pracy*, „Przegląd Prawa Publicznego" 2013, No. 5, p. 60 n.

[25] Dz.U. 2007, No. 250, Item 1870.

The cooperation of the Police and other bodies listed in § 1 item 2 of the Regulation is therefore manifested on the basis of § 4 of the Regulation in:

- notifying the application to the scope of jurisdiction of a breach of the provisions on the legality of employment found during the inspection, as well as about decisions and actions taken in this respect, decisions in court proceedings carried out at the request of these authorities,
- organization of joint trainings,
- conducting inspections at the request of a cooperating body,
- providing audit documentation,
- exchange of experience, in particular on improving control methods,
- providing information and explanations necessary for the proper performance of tasks in matters covered by the cooperation,
- undertaking initiatives regarding compliance with the law in matters belonging to the competent authorities,
- initiating changes in legal regulations,
- exchange of information during opinions on draft normative acts and information on the application of provisions related to the scope of cooperation.

In Art. 1.4 of the Act on the National Labour Inspectorate among many entities indicated therein with whom this inspection cooperates in carrying out tasks, the Police have also been mentioned. However, the legislator did not decide to specify this interaction with the Police in the tasks of this inspection referred to in Art. 10 of the Act, as I did in Art. 10, paragraph 1, point 8 in relation to cooperation with environmental protection authorities, and yet the violation of occupational health and safety regulations as a result of failure to comply with the provisions related to this safety is not without impact on the natural environment of man. In the work environment (which should not be equated only with the performance of work on the premises of the workplace, but also with another designated place), there are many health-threatening hazards, e.g. in the form of chemical, biological, dust or radiation factors, which cause not only safety and occupational hygiene threats but threats to other types of security, e.g. public and general security, people and the state, etc.

Acting or failing to provide safe and healthy working conditions is often the result of offenses or crimes committed. Examples include serious breakdowns, transport of hazardous materials, work at height, or work in emergency medical services, in which employees often perform rescue operations without proper equipment with necessary personal protective equipment that meets standards[26].

[26] See: M. Liwo, *Poważne awarie. Przeciwdziałanie, organy i podmioty właściwe*, „Inspektor Pracy" 2011, No. 4; *idem*, *Wpływ przestrzegania prawa pracy, w tym bezpieczeństwa i higieny pracy, na bezpieczeństwo ruchu drogowego* [in:] *Prawno-ekonomiczne i techniczne aspekty bezpieczeństwa w ruchu drogowym*, Rzeszów 2007, p. 283 n.; *idem*, *Bezpieczeństwo i porządek publiczny a bezpieczeństwo pracy*, „Inspektor Pracy" 2010, No. 10; J. Mydlarska, M. Popow, M. Rybakowski, *Poczucie bezpieczeństwa pracy ratowników medycznych i funkcjonariuszy Biura Ochrony Rządu* [in:] *Bezpieczeństwo w środowisku pracy. Postępy medycyny pracy, ratownictwa medyczne-*

Against the background of the above observations indicating a link between occupational health and safety with public safety and the legal consequences of violating occupational safety regulations, it is justified to state that the Police are a partner particularly close to the National Labour Inspectorate in actions to ensure occupational safety, which, if not observed in certain sizes, also threatens public safety.

When addressing the subject of the Police cooperation with the National Labour Inspectorate, one should also point out the obligations of the Police authorities to provide appropriate assistance to the representatives of the National Labour Inspectorate, in the event of a justified need to ensure their safety. This obligation was formulated in Art. 15 of the Act on this inspection, followed by this article, in Art. 16, the discussed authorization for the Prime Minister to specify the mode and form of cooperation of other supervisory and control bodies was discussed with the National Labour Inspectorate to ensure efficient and effective cooperation. Against the background of Art. 15 of the Act on the National Labour Inspectorate, the obligation to help cannot be equated with the obligation of help with cooperation in meaning for instance in Polish language, according to it, the help means the actions taken for the good of other entity and concurrence – collectivity of actions connected with other entities for contributing to a particular result[27].

Cooperation of the Police with the National Labour Inspectorate under the Agreement of 11 December 2000 between the Chief LabourInspector and the Chief Police Commander

According to the Agreement, his parties undertook to cooperate in preventing crimes and offenses related to the performance of paid work.

This cooperation is implemented in particular through mutual information and coordination of activities in matters covered by the Agreement, including joint activities.

The agreement also imposes specific obligations on both the National Labour Inspectorate bodies and the Police authorities manifesting themselves in providing access to specific documentation, providing specific assistance in inspection and evidentiary activities, and notification on violations of the law related to specific facts and mutual participation in meetings and co-organization of trainings related to labour protection.

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go i inżynierii bezpieczeństwa pracy, ed. J. Konieczny, Poznań–Łódź–Inowrocław 2011, p. 273 n. The aforementioned collective study also includes safety in the work environment and other publications related to the impact of the work environment on safety in various approaches.

[27] J. Bralczyk, *Słownik 100 tysięcy*…, pp. 394, 929.

Cooperation, which is very important, takes place not only at the level of the Chief Police Commander and the Chief Labour Inspector, but also at the field levels between the district labour inspectors and the voivodship commanders of the Police.

In order to enable control of the implementation of the Agreement, it provides for an assessment of its implementation at least once a year.

According to statistical materials of the National Labour Inspectorate regarding cooperation with the Police, the State Labour Inspectorate and the Police conducted 181 joint inspections in 2018, 180 in 2017, and 233 in 2016. However, at the request of the cooperating body, 416 inspections were carried out in 2018, 421 in 2017 and in 2016 – 356.

The State Labour Inspectorate also directed 543 notifications to the Police in 2018 on the results of the audit, in 2017 – 582, and in 2016 – 570.

It should be noted that cooperation with the Police by the National Labour Inspectorate not only takes place in the field of control, but also includes prevention and promotion of safe behavior, e.g. through contests and conferences, as well as training to disseminate labour protection issues in various directions.

Special manifestations of cooperation between the State Labour Inspectorate and the Police are connected with the control of employment legality, the nature of which requires appropriate preparations in various directions and actions taken by police officers as well as the Border Guard in the event of illegal employment of foreigners[28].

From the content of the concluded Agreement and information about its implementation it appears that it contributes in a way that recognizes the achievement of the intended objectives aimed at improving compliance with the law not only in employment relations, but also to strengthen the rule of law in other areas of law, through the joint influence of the parties that have concluded the Agreement.

Recapitulation and conclusions

Cooperation as a joint action undoubtedly increases the effectiveness of the entities that undertake it.

However, the cooperation of the Police with the National Labour Inspectorate has no explicit reference in the Act on the Police, except for the obligation contained in Art. 7 of this Act regarding consultation of the conditions of safety and hygiene of the service, it was, however, indicated in the Regulation of the Prime Minister of 28 December 2007 on cooperation of certain bodies with the National Labour Inspectorate in the field of safety and occupational hygiene and employment legality.

[28] Prepared on the basis of information sent by the Chief Labour Inspector to the author in a letter of 17 April 2020 UNPGiP-20 – 26178 and GIP GG0871.49.2020.4 and reports of the Chief Labour Inspector on the activities of the National Labour Inspectorate in 2016–2018.

However, the special scope of the Police cooperation with the National Labour Inspectorate results from the concluded Agreement of 11 December 2000 between the Chief Labour Inspector, and the Chief Police Commander, taking into account the wide thematic scope consistently implemented by the parties to the Agreement, as indicated by statistical data presented by the National Labour Inspectorate.

The impact of occupational health and safety on various types of safety, including public safety and the convergence of specific tasks in its subject on the part of the Police and the National Labour Inspectorate as a special type of public entities, however, prompts reflection on the need to include wording in the laws regarding these entities indicating the obligation to cooperate.

Bibliography

Biernat S., *Działania wspólne w administracji państwowej*, Wrocław–Warszawa–Kraków–Gdańsk 1979.

Boć J., *Prawo administracyjne*, Wrocław 2000.

Bralczyk J., *Słownik 100 tysięcy potrzebnych słów*, Warszawa 2005.

Brzozowski W., *Współdziałanie władz publicznych*, „Państwo i Prawo" 2010 No. 2.

Cieślak Z., *Porozumienie administracyjne*, Warszawa 1985.

Kawka W., *Policja w ujęciu historycznym i współczesnym*, Wilno 1939.

Knosala E., *Zarys nauki administracji*, Warszawa 2006.

Kotarbiński T., *Traktat o dobrej robocie*, Wrocław–Warszawa–Kraków–Gdańsk 1973.

Kręcisz W., Orłowski W., *Przygotowanie, przyjęcie i ogólna charakterystyka Konstytucji z 1997 r.* [in:] *Polskie prawo konstytucyjne*, Lublin 2001.

Leoński Z., *Materialne prawo administracyjne*, Warszawa 2006.

Liwo M., *Bezpieczeństwo i porządek publiczny* a *bezpieczeństwo pracy*, „Inspektor Pracy" 2010, No. 10.

Liwo M., *Poważne awarie. Przeciwdziałanie, organy i podmioty właściwe*, „Inspektor Pracy" 2011, No. 4.

Liwo M., *Służby mundurowe jako kategoria języka prawniczego*, „Przegląd Prawa Publicznego" 2015, No. 2.

Liwo M., *Utworzenie i status prawny Państwowej Inspekcji Pracy*, „Przegląd Prawa Publicznego" 2013, No. 5.

Liwo M., *Wpływ przestrzegania prawa pracy, w tym bezpieczeństwa i higieny pracy, na bezpieczeństwo ruchu drogowego* [in:] *Prawno-ekonomiczne i techniczne aspekty bezpieczeństwa w ruchu drogowym*, Rzeszów 2007.

Łukasiewicz I., *Prawne uwarunkowania skuteczności działań administracji państwowej*, Lublin 1990.

Muszyński N., *Współdziałanie organów bezpieczeństwa i porządku publicznego z organami finansowymi w zakresie wykrywania i zwalczania wykroczeń skarbowych* [in:] *Współdziałanie organów bezpieczeństwa i porządku publicznego w zakresie wykrywania wykroczeń i ścigania ich sprawców*, Lublin 2012.

Mydlarska J., Popow M., Rybakowski M., *Poczucie bezpieczeństwa pracy ratowników medycznych i funkcjonariuszy Biura Ochrony Rządu* [in:] *Bezpieczeństwo w środowisku pracy. Postępy medycyny pracy, ratownictwa medycznego i inżynierii bezpieczeństwa pracy*, ed. J. Konieczny, Poznań–Łódź–Inowrocław 2011.

Olejniczak-Szałowska E., *Prawny obowiązek współdziałania Policji z innymi służbami w sferze ochrony bezpieczeństwa i porządku publicznego* [in:] *Policja. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019.

Pieprzny S., *Administracja bezpieczeństwa i porządku publicznego*, Rzeszów 2012.
Prawo administracyjne, ed. A. Błaś, Wrocław 1996, 1997.
Ura E., *Pojęcie ochrony bezpieczeństwa i porządku publicznego*, „Państwo i Prawo"1974, No. 2.
Ura E., *Prawo administracyjne*, Warszawa 2015.
Wierzbowski M., Grzywacz M., Piecha J., *Podstawowe pojęcia teoretyczne w nauce prawa administracyjnego* [in:] *Prawo administracyjne*, ed. M. Wierzbowski, Warszawa 2017.
Wierzbowski M., Witkowska A., *Prawne formy* działania *administracji* publicznej [in:] *Prawo administracyjne*, ed. M. Wierzbowski, Warszawa 2017.
Wrzostek S., *System: administracja publiczna. Systemowe determinanty nauki administracji*, Lublin 2008.
Wyporstka-Frankiewicz I., *Publicznoprawne formy działania administracji o charakterze dwustronnym*, Warszawa 2010.
Zimmermann I., *Prawo administracyjne*, Warszawa 2018.

Summary

Cooperation is one of the forms of impact having a significant impact on increasing the efficiency of the implementation of tasks by cooperating entities. It can result either from legal regulations as specific initiatives of specific entities, also taking the form of an agreement. The Police cooperation with the National Labour Inspectorate is the result of specific normative regulations and the concluded Agreement, which includes a wide range of topics.

An analysis of the parties' activities against the background of the concluded Agreement indicates appreciation of its provisions by the Police and the National Labour Inspectorate to ensure the rule of law in employment and in other matters to which it relates.

Keywords: cooperation, Police, National Labour Inspectorate, conditions, effects

UWARUNKOWANIA WSPÓŁDZIAŁANIA POLICJI Z ORGANAMI PAŃSTWOWEJ INSPEKCJI PRACY

Streszczenie

Współdziałanie jest jedną z form oddziaływania mającą istotny wpływ na zwiększenie efektywności realizacji zadań przez podmioty współdziałające. Może ono wynikać zarówno z regulacji prawnych, jak i określonych inicjatyw określonych podmiotów, przyjmujących również formę porozumienia.

Współdziałanie Policji z Państwową Inspekcją Pracy jest wynikiem określonych regulacji normatywnych i zawartego Porozumienia, które zawiera szeroki zakres tematyczny. Analiza działań stron na tle zawartego Porozumienia wskazuje na docenienie jego postanowień przez Policję i Państwowa Inspekcję Pracy dla zapewnienia praworządności w zatrudnieniu i w innych sprawach, których ono dotyczy.

Słowa kluczowe: współdziałanie, Policja, Państwowa Inspekcja Pracy, uwarunkowania, efekty

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HUMAN RIGHTS. POLAND AND THE UN DECLARATIONS ON HUMAN RIGHTS

Introduction

Poland and the UN and Council of Europe Conventions until 1989

In 1948, Poland was one of the few countries that abstained from voting on the Universal Declaration of Human Rights – the Soviet Union and its other satellite states did the same, as well as Saudi Arabia, for which it was unacceptable to introduce and respect the freedom to change religion guaranteed by the Declaration, as well as South Africa, where in 1948 the apartheid system began to function more and more strongly. The attitude of the People's Poland to the doctrine of human rights was definitely negative, because critics of the communist system derived from the human rights justification for this criticism. In the PRL (The People's Republic of Poland), the Universal Declaration of Human Rights was not widely available (it was printed for the first time only 9 years after its adoption)[1]. When, pursuant to the findings of the Conference on Security and Cooperation in Europe, Poland ratified the Human Rights Pact, only the ratification messages, without text, appeared in the Journal of Laws (pol. Dziennik Ustaw).

1. Main reasons for not ratifying the Universal Declaration of Human Rights in 1948:
   - the intensification of the "Cold War" between the broadly understood western world and the Eastern bloc,
   - no clear intension to "fight against fascism" in the declaration – **official reason** (among allies of the United States there were countries with authoritarian regimes bearing some fascist characteristics: Portugal, Spain, Haiti, Cuba).
2. The People's Republic of Poland and human rights in UN Declarations until 1989:

[1] J.J. Szczerbowski, P. Piotrowska, *Measures to Dismantle the Heritage of Communism in Central and Eastern Europe*, „Human Rights' Context, Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol" 2010, No. 62/63, pp. 233–248.

- ratified:
  - International Convention on the Elimination of All Forms of Racial Discrimination (ratified in 1969),
  - International Covenant on Civil and Political Rights (ratified 1977),
  - International Covenant on Economic, Social and Cultural Rights (ratified 1977),
  - Convention on the Elimination of All Forms of Discrimination against Women (ratified 1981),
- ratified, but not fully implemented:
  - Final Act of the Conference on Security and Cooperation in Europe (CSCE) – the so-called "Helsinki Accords" signed in August 1975,
- not ratified: the two UN conventions on stateless persons (1954 and 1961) were not ratified by The People's Republic of Poland because of the need to deal with systemic violations against:
  - former Polish Armed Forces in the West servicemen (1940–1947),
  - politicians and members of the Provisional Government in London (since 1945 a political body unrecognized by anyone),
  - anticommunist exiles and refugees from Poland (1944–1956),
  - German population expelled from the lands seized under the provisions of Yalta (1945–1950),
  - unlawfully expelled from Poland citizens of Jewish origin (March 1968).

3. Of course, the People's Republic of Poland did not sign or ratify international conventions adopted by the Council of Europe, because Poland was not one of the member states. Between 1953 and 1983, the Council of Europe adopted some 17 different conventions concerning human rights, which were not taken into account by Poland. Nonetheless, the ratification of the CSCE allowed the activities of the first non-governmental organizations, like KOR (Komitet Obrony Robotników – Workers' Defence Committee), ROPCiO (Ruch Obrony Praw Człowieka i Obywatela – Movement for Defense of Human and Civic Rights).

In 1989, the democratization of political and social life occurred as a consequence of a political breakthrough that allowed Poland to fully accept international regulations in the field of human rights protection. The effect of these changes was the ratification of many agreements and the adoption of international control procedures. These actions – by authenticating the Polish system of democracy, the rule of law and human rights – constituted an important step on the road to the Council of Europe, the North Atlantic Pact and the European Union.

Poland and International Declarations on Human Rights

1. The period of socio-systemic transformation of 1989–1992 (chronological framework set by the Round Table and adoption of the Constitutional Act of 17 October 1992).

Along with the change and transformation of the political and social system, some changes in the attitude of the Polish authorities regarding human rights could be expected. In 1989, the Polish structure of Amnesty International (although, before the fall of the Polish People's Republic, the "Amnesty International Bulletin" with information from the world was published in Polish by the Freedom and Peace Movement). Currently, Polish Amnesty International has 8,000 members and supporters, 12 local groups, 7 educational groups and over 100 school groups.

The same year the Helsinki Foundation for Human Rights in Poland were created Its creation was preceded by seven years of activity of the Helsinki Committee in Poland, which had worked underground since 1982. After the change of the political system in Poland in 1989, the members of the Committee decided to reveal themselves and create an independent institute dealing with education and research in the field of human rights. Since the law in force at that time did not allow the creation of independent institutes, it was decided to set up a foundation to fulfil this role.

At that time, the following international conventions were also ratified:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1989) (no defined crime of torture in the Polish Penal Code),
- The Convention requires states to take effective measures to prevent torture in any territory under their jurisdiction, and forbids states to transport people to any country where there is reason to believe they will be tortured.

The text of the Convention was adopted by the United Nations General Assembly on 10 December 1984 and, following ratification by the 20th state party, it came into force on 26 June 1987.

2. Convention on the Rights of the Child (ratified 7 June 1991).

The adoption of the Convention is one of Poland's major achievements in the field of the protection of children's rights. In 1978, Poland proposed the UN Human Rights Commission to pass it and presented a draft which was later modified twice. On the basis of the Convention, a body was established to supervise its implementation by the countries that ratified it – the Committee on the Rights of the Child. The Convention guarantees the rights of the child, regardless of skin color, religion or origin. It was adopted by the United Nations General Assembly in 1989, Poland is the initiator of its adoption. The Convention entered into force in 1990. The parties to the Convention are 195 states (June 2015). Poland ratified the convention in 1991.

The provisions of the Convention on the Rights of the Child are the cornerstone of UNICEF's efforts to make them a canon of ethical principles and international standards for dealing with children.

Nevertheless, even in this case, there were reservations about two important issues: adopted children had no right to determine natural parents' data, and the question of the age limit of military conscription in the event of war (the limit

of 15 years) was reserved in accordance with applicable law. Both of the above reservations were withdrawn later (Oświadczenie Rządowe z dnia 27 marca 2013 r. w sprawie zmiany zakresu obowiązywania Konwencji o prawach dziecka, przyjętej dnia 20 listopada 1989 r. w Nowym Jorku – Dz.U. 2013, Item 677).

On the other hand, the more serious consequences for the subjectivity of children have subsequent reservations according to which the Polish side states that the right to freedom of thought, conscience and religion and expressing their views by the child and the occurrence in matters of the child concerning, in administrative and judicial proceedings is limited "by the parental authority and must comply with Polish customs and traditions concerning the place of the child in the family and outside the family". In the second declaration, the Polish side stated that "counselling for parents and upbringing in the field of family planning should be in accordance with the norms of morality". Such records questioned the children's right to freedom of conscience by:

- giving the parents legal basis to suppress the freedom of thought and impose their own worldview (even in the crucial for shaping self-awareness of teenage age – 14–18 years, when "children" for the first time become familiar with ideas and different worldview visions),
- the lack of legal protection of the LGBTQ minority (sexual awareness is shaped during teenage years) against homophobic attitudes on the part of parents. It is worth noting that to this day, politicians are countering the introduction of sex education in schools.

The issue of proper protection of minors in terms of psychological and psychiatric care has still not been settled. An increase in the phenomenon of suicide attempts and deliberate self-harm among children is observed. According to the data of the National Police Headquarters, in 2017 28 children between the ages of 7 and 12 and 702 children between the ages of 13 and 18 carried out suicide attempts, which in 116 children ended in deathHowever, these data do not reflect the real scale of the phenomenon, which is why there is an urgent need to introduce an effective system of data collection and analysis. The need to create nationwide preventive and therapeutic programs in the field of counteracting depression and suicide attempts in children is still valid.

Another warning sign was the non-ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which was adopted on 18 December 1990 by the UN General Assembly. The purpose of the Convention is to protect all legal and illegal migrant workers from exploitation by establishing international standards in the field of social protection and human rights and the obligations arising therefrom for sending and receiving migrants. In particular, the Convention aims to prevent illegal employment of migrants. The Committee for the Protection of the Rights of All Workers – Migrants and Members of Their Families supervises the implementation of the provisions of the Convention. The attitudes of the Polish side

towards the ratification of other conventions have not been consistent because volatile governments at that time and the increasingly difficult economic situation in the country.

Nevertheless, on 26 November 1991, Poland became a member of the Council of Europe and signed the European Convention on Human Rights, The Convention for the Protection of Human Rights and Fundamental Freedoms is an international treaty, by virtue of which Council of Europe Member States are obliged to protect the fundamental rights, not only of their own citizens, but also of every person under their jurisdiction. Signed on 4 November 1950 in Rome; the Convention entered into force in 1953

Being part of this organization with large arrears in terms of ratifying important human rights conventions. Membership in the council brought the Polish side closer to the process of European integration (the issue of which was not even the consent of the "post-solidarity" camp, because some of the politicians of the former anti-communist opposition were against this step).

The most advanced system of standards and protection of human rights was created within the Council of Europe. Poland was admitted to this organization in 1991, after meeting three statutory requirements: the introduction of representative and pluralist democracy, respect for the rule of law and fundamental human rights and freedoms. With the official accession to the Council of Europe, Poland adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms, and then made a declaration of recognition of the competence of the European Commission of Human Rights and the European Court of Human Rights. These activities meant the acceptance by Poland of the entire convention system with its high substantive and control standards as well as the jurisprudence of the European Commission and the Court of Human Rights developed over many years. Poland has also acceded to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the European Social Charter. The ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms has given Polish citizens the full right to lodge individual complaints with the European Court of Human Rights.

Human rights during preparations for European integration

The situation did not change after the adoption of the Constitutional Act of 17 October 1992. On one hand, there were processes that had a positive impact on the image of Poland as a country striving to catch up with the civilization of the West. As an example, it can be noted that the ratification of the European Convention on Human Rights (19 January 1993) and submission to the jurisdic-

tion of the European Court of Human Rights in Strasbourg (Overall until 10 September 2015 Poland ratified 94 different conventions of the Council of Europe, signing another 16).

This step was to meet the important need for the young democracy to be able to fight systemic, legislative and legal violations of human rights. Perhaps it would be considered a success if it was not for the previous law on the right to terminate pregnancy.

The Constitution of the Republic of Poland, in force since 1997, devoted the entire second chapter to the rights and freedoms of man and citizen: The inherent and inalienable human dignity is a source of human and citizen freedoms and rights. It is inviolable, and its respect and protection are the responsibility of public authorities. The catalogue of rights provided for in the Constitution is very extensive and covers all citizens of the Republic of Poland regardless of gender, social origin, religion or nationality[2]. Any discrimination in access to education, work, promotion and exercising public functions is prohibited. The state guarantees Polish citizens belonging to national and ethnic minorities the freedom to preserve and develop their own language, preserve customs and traditions, and develop their own culture. National and ethnic minorities have the right to create their own educational and cultural institutions and institutions serving the protection of religious identity and to participate in settling matters concerning their cultural identity. Citizens are subject to broadly understood protection of life and health, it is forbidden to subject people to medical experiments (without their consent), torture, inhuman or degrading treatment and corporal punishment.

Having freshly remembered the cases of violation of human and citizen rights by the communist authorities, the legislator devoted a lot of space to the issue of inviolability and personal freedom. Deprivation or restriction of liberty may occur only on the terms and in the manner specified by statute. The detained person must be notified immediately of the reasons for detention, and if deprived of his liberty unlawfully, he may claim damages. It is worth paying attention to Art. 45 of the Constitution: Everyone has the right to a fair and public hearing without undue delay by a competent, independent, impartial and independent court[3]. This is a provision the violation of which is the most common basis for bringing a complaint to the European Court of Human Rights in Strasbourg.

On 7 January 1993, the Sejm limited access to abortion by adopting one of the most restrictive (to this day) anti-abortion laws in Europe. The Act introduced, among others a ban on abortion with a few exceptions. The records are

[2] M. Chmaj, *Wolności i prawa człowieka w Konstytucji Rzeczypospolitej Polskiej*, Warszawa 2006.

[3] On the independence of courts and judges see also: M. Rzewuski, *A Few Words About Judge's Freedom of Expression* [in:] *Contemporary problems of human rights. Selected aspects*, eds. M. Mamiński, M. Rzewuski, Warsaw 2019, pp. 19–34; A. Pawlak, *Communication skills of a judge and the right to a fair trial* [in:] *Contemporary problems of human rights. Selected aspects*, eds. M. Mamiński, M. Rzewuski, Warsaw 2019, pp. 35-54.

controversial to this day and have been tried many times to change them. From the beginning, the Act aroused great emotions in society. Among the opponents of its adoption were some women's organizations, including Federation for Women and Family Planning. Its then chairwoman Wanda Nowicka assessed in an interview with PAP that the act "is no compromise" because the opinion of the public was not taken into account – especially women. The established social committees protested against this step, and the Association for Rights and Freedoms gathered 1.7 million signatures of support under the milder version of the planned law before the vote. However, the voice of quite a large number of citizens has been completely ignored by politicians.

Again, there was also a whole group of various conventions of the Council of Europe, which Poland did not ratify, although it signed them:

- Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (1999),
- Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings (1999),
- European Convention on Nationality (1999),
- Convention on Cybercrime (2001),
- Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (2003),
- Convention on Contact concerning Children (2003),

or refused at all the following:

- European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors (1953),
- Protocol To The European Interim Agreement On Social Security Schemes Relating To Old Age, Invalidity And Survivors (1953),
- European Convention on Social and Medical Assistance (1953),
- Protocol to the European Convention on Social and Medical Assistance (1953),
- European Code of Social Security (1964),
- Protocol to the European Code of Social Security (1964),
- European Convention on the International Validity of Criminal Judgments (1970),
- European Convention on the Repatriation of Minors (1970),
- European Convention on the Transfer of Proceedings in Criminal Matters (1972)
- European Convention on Social Security (1972),
- Supplementary Agreement for the Application of the European Convention on Social Security (1972),
- European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (1974),

- Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality (1977),
- Additional Protocol to the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality (1977),
- Protocol amending the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality (1977),
- European Convention on the Legal Status of Migrant Workers (1977),
- European Convention on the Compensation of Victims of Violent Crimes (1983),
- European Code of Social Security (revised) (1990),
- Convention on the Participation of Foreigners in Public Life at Local Level (1992),
- Protocol to the European Convention on Social Security (1994),
- Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (1995),
- Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (2000),
- Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin (2002).

Nevertheless, Poland has also signed and ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 2002.

However, the overall assessment of this period is not very favourable. A shadow of ratification of conventions dealing with certain human rights were caused by quite serious deficiencies in the rights of women (abortion, access to contraception and sex education), attempts to exert pressure and prosecute journalists who criticize power or relations between the State and the Roman Catholic Church (often a factor for the question of freedom of speech and the press was decisive)[4].

Human rights in European integration (since 2004) – inconsistency or selective approach?

The accession of Poland to the European Union on 1 May 2004 was the crowning achievement of many years of integration activities. In a sense, this was seen as a symbol of a certain "catching up" of Western Europe, but serious reservations about human rights still remained. The fact that since joining the EU, Poland has ratified some international agreements such as:

- The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (2004),

[4] On the Catholic church and Polish relationship see: B. Sitek, *Citizenship and the role of the Catholic church in the modern world*, „Teka Komisji Prawniczej PAN Oddział w Lublinie" 2019, Vol. XII, No. 1, pp. 249–259; A. Banaszak, *Unia Europejska a Kościół Katolicki*, „Journal of Modern Science" 2014, No. 23(4), pp. 327–349.

- The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2005),
- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (2006),
- Convention on the Rights of Persons with Disabilities (2012),
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (2014),
- Arms Trade Treaty (2014).

Nevertheless, the signing of the extremely important and media Convention on the prohibition of the use of cluster munitions from 2008 was refused. Loss for the Polish arms industry and reduced combat effectiveness were given as an explanation. Cluster munitions – particularly dangerous for civilians – have been officially banned. International humanitarian organizations have long been demanding this. The Convention, which enters into force on 1 August, has been signed by 108 countries. Proponents of the ban call the United Nations decision the most important humanitarian agreement of the decade when it comes to disarmament.

In Art. 1 The Convention prohibited all use, production, testing, acquisition, transfer and storage of cluster munitions, as well as supporting, encouraging or inducing any activity contrary to this prohibition.

The parties were obliged to destroy existing stocks within 8 years and to clear unexploded lands containing them within 10 years, with the possibility of extending these deadlines if it proved impossible to keep them[5].

In the same year, the District Prosecutor's Office in Warsaw started an investigation into a very medial (and not yet clarified) case of alleged secret CIA prisons in the Republic of Poland, that were supposed to operate after the 9/11 attacks on New York. Basically, a summary of all accusations under reputation Polish was the report of the European Committee for the Prevention of Torture of 2011, which stated continued use of violence by the Police and the Border Guard, including tortures that did not leave permanent traces on the body.

It is worth noting that years later during the visit, the CPT's delegation assessed progress made since previous visits and the extent to which the Committee's recommendations had been implemented. Particular attention was paid to the treatment of persons in police custody, foreign nationals detained in Border Guard establishments, remand and sentenced prisoners, juvenile offenders and civil and forensic psychiatric patients.

Human Rights Watch criticized in its report legal regulations concerning abortion and birth control in Poland, taking into account the particularly anti-abortion law of 1993, which was particularly restrictive (in the entire Union).

[5] https://www.msz.gov.pl/pl/polityka_zagraniczna/polityka_bezpieczenstwa/rozbrojenie_konwencjonalne/amunicja_kasetowa/) (11.2018).

Of course, these problems were then known to specialists, journalists and NGO-s that have repeatedly pointed out quite inconsistent policies in this regard in recent years (especially since 2010). The "selective" (according to some) approach of Polish governments to ratify and fulfil obligations resulting from international conventions on human rights was very negatively assessed.

In June 2010, Prof. Roman Wieruszewski (Poznań Center for Human Rights PAS), stated that "Poland avoids the ratification of some treaties", exemplifying the failure to ratify the second Additional Protocol from the Covenant of Civil and Political Rights (prohibition of the death penalty) or the Council of Europe's bioethical Convention (which is opposed by the circles associated with the Roman Catholic Church). Professor Wieruszewski points out that this puts Poland in a bad light on the international forum, he claims that the reason is either fears resulting from the consequences of adopting certain acts. As an example he shows the ratification of the UN Convention on stateless persons exposes Poland to the need to pay compensation for unlawful expulsions (1945–1950) and expulsion (1968) of people living in the lands that currently constitute the territory of the Polish State.

While the second (and much more frequent) reason is the use of some conventions as elements of the internal political games in Poland. There is no such thing in Poland as a policy of ratifying international treaties and conventions. Some are quickly ratified and introduced into the Polish legal system, while others wait for years. Often, the cause of such delays are concerns about the effects of assuming by the state the burden of international agreement, but much more often it is due to internal political game – says prof. Roman Wieruszewski from the Poznań Center of Human Rights of the Polish Academy of Sciences[6].

As recently as 2014, the Ombudsman Irena Lipowicz demanded that the government prepare a concrete plan for the ratification of conventions related to human rights, to no avail.

In recent years, in addition to the Council of Europe's bioethical Convention (in Poland the issue of convention has been reduced to in-vitro fertilization), the **Council of Europe Convention on preventing and combating violence against women and domestic violence** (2011) aroused much of a stir among some of the more conservative and catholic circles, which considered it an attempt on tradition and family in Poland. Finally, in 2015, the Convention was ratified by the Polish parliament, but the law and specific laws implementing the provisions and recommendations of this document were not changed completely, so in practice it remained only a blank declaration without coverage to this day. It is significant that while discussing the Convention, Poland (like Russia) was also making amendments to Art. 21 of this document, according to which the

[6] https://www.prawo.pl/prawnicy-sady/prof-roman-wieruszewski-polska-unika-ratyfikacji-niektorych-traktatow,31899.html (11.2018).

state was to assist victims in making individual or collective complaints. According to the representatives of both countries, the state is not obliged to do so[7].

Of course, these are just some examples, but the timing of the performance does not allow you to go deeper into the subject.

The two years that have passed since November 2015 brought the most challenges and threats to human rights and freedoms in the entire period after 1989 – the Helsinki Committee assesses the situation in Poland.

In their position, members of the Committee indicate that since the end of 2015, a number of events have taken place that have required intensified efforts to monitor compliance with human rights. These events include, above all, the growing constitutional crisis, legislative changes leading to the exclusion of effective constitutional review and the limitation of the guaranteeing role of the judiciary in the separation of powers.

Conclusion: 28 years after regaining independence – the state of human rights in Poland

In summary, there are several points to be noted:

1. Within 25 years of adjudication, the European Court of Human Rights issued 1145 sentences[8] concerning Poland, 958 of which are unfavorable. In addition, the Helsinki Foundation for Human Rights also emphasizes that very often these judgments are not carried out in full: "the execution of the judgment cannot be equated only with acknowledgment of the violation and payment of compensation to the individual, because the correct execution of the Tribunal's judgment, apart from the obvious and necessary compensation for the violation, it also depends, «perhaps from the social point of view, first of all on bringing the state's right to such a state that will be compliant with the Convention standards»"[9].

Just paying compensation, however important, will not change the letter of the law or the practice of its application. In order to achieve this, it is necessary to analyze the justification of the judgment and to draw conclusions from it for

[7] M. Bojaruniec, *Intimate Partner Violence and UN Activity on Women Rights Protection* [in:] *Contemporary problems of human rights. Selected aspects*, eds. M. Mamiński, M. Rzewuski, Warsaw 2019, pp. 497–514.

[8] https://www.prawo.pl/prawnicy-sady/raport-helsinskiej-fundacji-praw-czlowieka-o-wykonywaniu-przez,333424.html (11.2018).

[9] *Wyrok w Strasburgu to nie koniec! Raport na temat wykonywania wyroków Europejskiego Trybunału Praw Człowieka*, Warszawa 2018, http://www.hfhr.pl/wp-content/uploads/2018/11/Wykonywanie-wyrok%C3%B3w-ETPC-2018-FIN.pdf (11.2018). See also: A. Łukaszczuk, *Prawo do udziału w zgromaczeniach i stowarzyszania się osób zatrudnionych w służbie publicznej na podstawie orzecznictwa Europejskiego Trybunału Praw Człowieka* [in:] *Prawa człowieka w funkcjonowaniu administracji publicznej*, eds. F. Parente, B. Sitek, I. Florek, Józefów 2018, pp. 169–181.

the future. By recognizing the jurisdiction of the ECtHR, the state agrees to the implementation of the Strasbourg case law into its legislation and to periodic examination of its state by the Committee of Ministers of the Council of Europe conducted in order to improve the legal infrastructure in the field of human rights in a given country – reminds the HFHR.

2. In 2016, the Council of Europe Commissioner Nils Muiżnieks presented a report in Warsaw on the state of human rights in Poland, in which the Council of Europe pointed to a number of reservations regarding respect for human rights in Poland, pointing to legislative and systemic attempts to limit them. Earlier, the European Commission issued a critical opinion on the activities of the Polish government.

"Recent far-reaching changes to Poland's legal and institutional framework threaten human rights and undermine the rule of law, on which the protection of human rights ultimately depends. Lawmakers and the Government should urgently change course"[10], said Nils Muižnieks.

The Commissioner was particularly concerned by the prolonged paralysis of the Constitutional Tribunal which "bears heavy consequences for the human rights protection of all Polish citizens and prevents human rights proofing of legislation". He called on the Polish authorities to urgently find a way out of the current deadlock, stressing that "the rule of law requires that any solution be based on respect for and full implementation of the judgments of the Tribunal"

3. The IGLA-Europe ranking in 2018 places Poland in the 38th position in terms of tolerance in Europe – 18.23% acceptance for sexual diversity, which is the lowest tolerance indicator in the entire European Union. What's more, the 2017 Human Rights Watch report also indicated that the perpetrators of crimes arising from sexual orientation most often avoid responsibility in Poland.
4. A sad summary of the whole issues is the position of the Helsinki Committee of 15 February 2018:

„We have recorded closing public discourse, limiting the freedom of assembly, limiting the conditions of action for civil society organizations. We pointed out that undermining the position and independence of the judiciary poses a direct threat to the level of protection of human rights and freedoms. We opposed the assassination of constitutional democracy and the dismantling of the rule of law.

We expressed the scandal concerning to the conduct of legislative work, aimed at unconstitutional changes in the law on the system of courts, the law on the Supreme Court, and the National Council of the Judiciary"[11].

[10] Council of Europe, https://www.coe.int/en/web/portal/home/-/asset_publisher/ke6Wfgn94238/content/erosion-of-rule-of-law-threatens-human-rights-protection-in-poland?_101_INSTANCE_ke6Wfgn94238_viewMode=view/ (11.2018).

[11] http://obserwatoriumdemokracji.pl/wp-content/uploads/2016/03/stanowisko_komitet-helsinski-w-polsce_15022018.pdf (11.2018).

In all, it can be noticed that instead of strengthening human rights and progressing legislation aimed at guaranteeing them, Poland is moving away from the standards set by the conventions it has ratified[12]. We can only hope, that this is a temporary situation.

Bibliography

Banaszak A., *Unia Europejska a Kościół Katolicki*, „Journal of Modern Science" 2014, No. 23(4).

Bojaruniec M., *Intimate Partner Violence and UN Activity on Women Rights Protection* [in:] *Contemporary problems of human rights. Selected aspects*, eds. M. Mamiński, M. Rzewuski, Warsaw 2019.

Chmaj M., *Wolności i prawa człowieka w Konstytucji Rzeczypospolitej Polskiej*, Warszawa 2006.

Łukaszczuk A., *Prawo do udziału w zgromaczeniach i stowarzyszania się osób zatrudnionych w służbie publicznej na podstawie orzecznictwa Europejskiego Trybunału Praw Człowieka* [in:] *Prawa człowieka w funkcjonowaniu administracji publicznej*, eds. F. Parente, B. Sitek, I. Florek, Józefów 2018.

Pawlak A., *Communication skills of a judge and the right to a fair trial* [in:] *Contemporary problems of human rights. Selected aspects*, eds. M. Mamiński, M. Rzewuski, Warsaw 2019.

Rzewuski M., *A Few Words About Judge's Freedom of Expression* [in:] *Contemporary problems of human rights. Selected aspects*, eds. M. Mamiński, M. Rzewuski, Warsaw 2019.

Sitek B., *Citizenship and the role of the Catholic church in the modern world*, „Teka Komisji Prawniczej PAN Oddział w Lublinie" 2019, Vol. XII, No. 1.

Sitek M., *The human right to freedom of opinion and expression and the twilight of Western civilization* [in:] *Contemporary problems of human rights. Selected aspects*, eds. M. Mamiński, M. Rzewuski, Warsaw 2019.

Szczerbowski J.J., Piotrowska P., *Measures to Dismantle the Heritage of Communism in Central and Eastern Europe*, „Human Rights' Context, Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol" 2010, No. 62/63.

Summary

Human rights are the foundation of democracy, a democratic society, freedom, justice and peace. Without human rights and awareness of their ownership, people cannot live in dignity. Human rights are the same for all of us, regardless of race, gender, religion, ethnicity, political or other beliefs, social origin, national origin, sexual orientation. There are cases in which human rights may be limited, but only in very specific situations, usually defined in international documents or constitutions of individual countries (e.g. due to the protection of certain values by the state, or due to threats such as war or public security). In 1948, Poland was one of the eight states that abstained from voting on the ratification of the Universal Declaration of Human Rights. Until the transformation of the political system between 1989–1992, the number of international conventions dealing with the issue of human rights, which the Polish state had not ratified, has increased.

[12] M. Sitek, *The human right to freedom of opinion and expression and the twilight of Western civilization* [in:] *Contemporary problems of human rights. Selected aspects*, eds. M. Mamiński, M. Rzewuski, Warsaw 2019, pp. 187–198.

Along with the democratization of public life in Poland and the accession process to the European Union, successive governments have signed certain conventions, but many important documents remain unratified or unimplemented, including significant conventions regarding the status of stateless persons or related to cluster munitions. This presentation aims at indication of the relation of Polish legislation and basic legal acts to the UN Universal Declaration of Human Rights and subsequent conventions aimed at protecting those rights. On the basis of a short comparative analysis, I will try to indicate how important human rights are to Poland nowadays.

Keywords: human right, Universal Declaration of Human Rights, European Union, Poland

PRAWA CZŁOWIEKA. DEKLARACJE ONZ W SPRAWIE PRAW CZŁOWIEKA

Streszczenie

Prawa człowieka są fundamentem demokracji, demokratycznego społeczeństwa, wolności, sprawiedliwości i pokoju. Bez praw człowieka i świadomości ich własności ludzie nie mogą żyć w godności. Prawa człowieka są takie same dla nas wszystkich, bez względu na rasę, płeć, religię, pochodzenie etniczne, przekonania polityczne, pochodzenie społeczne, pochodzenie narodowe, orientację seksualną. Zdarzają się przypadki, w których prawa człowieka mogą być ograniczone, ale tylko w bardzo szczególnych sytuacjach, zwykle zdefiniowanych w dokumentach międzynarodowych lub konstytucjach poszczególnych krajów (np. ze względu na ochronę niektórych wartości przez państwo lub z powodu zagrożeń, takich jak wojna lub bezpieczeństwo publiczne). W 1948 r. Polska była jednym z ośmiu państw, które wstrzymały się od głosu w sprawie ratyfikacji Powszechnej Deklaracji Praw Człowieka. Do czasu transformacji systemu politycznego w latach 1989–1992 wzrosła liczba konwencji międzynarodowych dotyczących kwestii praw człowieka, których państwo polskie nie ratyfikowało. Wraz z demokratyzacją życia publicznego w Polsce i procesem akcesyjnym do Unii Europejskiej kolejne rządy podpisały pewne konwencje, ale wiele ważnych dokumentów pozostaje nieratyfikowanych lub niewzmocnionych, w tym znaczące konwencje dotyczące statusu bezpaństwowców lub związane z amunicją kasetową. Prezentacja ta ma na celu wskazanie związku polskiego prawodawstwa i podstawowych aktów prawnych z Powszechną Deklaracją Praw Człowieka ONZ i późniejszymi konwencjami mającymi na celu ochronę tych praw. Na podstawie krótkiej analizy porównawczej postaram się wskazać, jak ważne są obecnie prawa człowieka dla Polski.

Słowa kluczowe: prawa człowieka, ONZ, Unia Europejska, Rzeczpospolita Polska

Z E S Z Y T Y N A U K O W E UNIWERSYTETU RZESZOWSKIEGO

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SELECTED PROCEDURAL RULES CONCERNING THE DEFENDANT AND THE REGIME OF ADMINISTRATIVE RESPONSIBILITY

The matter of procedural rules is one of the fundamental issues of criminal proceedings. Defining their catalog, content and mutual relations determines the model of criminal proceedings and indicates its priorities. Treatment of procedural principles proves the nature of the procedure, showing the values that shape it. The system of principles is created by a model of criminal proceedings, indicating what is the most important in it. "It is widely recognized that the rules of criminal proceedings define its most important features in the broader sense, and thus the construction of the process, its model, the way of coming to final arrangements, position and scope of guarantees of its participants. Their breakdown allows to find an answer to the question about the nature and shape of criminal proceedings. The most important values expressed by law of criminal proceedings are related to procedural principles. It is even considered that they form a special kind of system, full of mutual connections and references"[1].

In the context of criminal proceedings, the situation of the person against whom the proceedings are to be conducted, particularly it is a reflection of the way it was shaped and how the procedural rules were implemented. It is also related to the attitude of the state towards its citizen and providing them with a sense of legal security. This constitutes a highly significant element of a democratic state ruled by law, in which, both normative and factual guarantees of fair proceedings are preserved, including rights of defense. One of the essential elements of this right is the status of the person against whom proceedings are conducted. When talking about this person, take a broad perspective, applying the defendant mainly in crim-

[1] P. Wiliński, *Doniosłość zasad w procesie karnym. Fenomen zasad procesu karnego* [in:] *System Prawa Karnego Procesowego*, ed. P. Hofmański, Vol. III, part 1: *Zasady procesu karnego*, ed. P. Wiliński, p. 89 and the indicated literature.

inal proceedings, but also in fiscal penal process, in which the provisions are properly applied pursuant to Art. 113, § 1 of the Criminal Code[2]. The defendant should also be included in this aspect in disciplinary proceedings.

When talking about this type of liability, it should be noted that it is in fact a type of broadly understood criminal liability, adjusted to the needs of individual corporations, which have different professional and ethical standards[3], however, with the reservation that in disciplinary proceedings generally one forecasts proper application of the provisions of the Criminal Procedure Code, although this does not transform disciplinary proceedings into criminal proceedings. Provisions of the CCP may be used only to the extent that results from the specificity of disciplinary proceedings[4]. When talking about the criminal trial *sensu largo*, it should also be taken into account the defendant in the proceedings in misdemeanor cases, in which in the defined by Art. 8 of the Code of Civil Procedure[5], the provisions of the Code of Civil Procedure are applied accordingly, although there are also regulations directly related to fundamental issues, e.g. the right to defense (Art. 4 of the Code of Civil Procedure).

The right to defense in criminal proceedings is recognized as a directive under which the defendant has the right to defend his interests in the trial and to use the assistance of a lawyer. This right is guaranteed to the defendant under Art. 42, paragraph 2 of the Polish Constitution, as well as Art. 6 of the Criminal Procedure Code. Thus, it is a constitutional and legally defined principle[6]. However, this law is understood in a broader sense. "The constitution-maker, establishing in Art. 42, paragraph 3 of the Constitution of Poland, the constitutional principle of the right to defense to define the subjective scope of this right, he did not use the term «defendant», but the descriptive phrase «anyone against whom criminal proceedings are pending». Thus, in a constitutional provision a different legislative method was used than, for example, in Art. 6 of the Criminal Procedure Code, which explicitly refers to the defendant in a broad sense, also including the suspect (see Art. 71, § 3 of the Criminal Procedure Code). Thus, it is rightly noted that the exercise of the constitutional right of defense does not depend on obtaining the status of a suspect or accused person. Referring to the reasons for adopting in Art. 42, paragrafh 2 of the Polish Constitution, such solutions are obvious. The use of a concept firmly anchored in a specific procedure would pose a risk of adopting too narrow of a subjective scope of the right to defense, lim-

[2] The Act of 10 September 1999 of Penal and Fiscal Code (Dz.U. 2020, Item 19 as amended).

[3] K. Dudka, *Stosowanie przepisów k.p.k. w postępowaniu dyscyplinarnym w stosunku do nauczycieli akademickich* [in:] *Węzłowe problemy procesu karnego*, ed. P. Hofmański, Warszawa 2010, p. 355 and the indicated literature.

[4] Judgement of the Court of Justice of 11 September 2001, SK 17/00, OTK 2001, No. 6, Item 165, Dz.U. 2001, No. 103, Item 1129.

[5] The Act of 24 August 2001 Petty Offences Procedure Code (Dz.U. 2020, Item 729).

[6] S. Waltoś, *Naczelne zasady procesu karnego*, Warszawa 1999, pp. 117, 122.

ited only to the passive party in these proceedings. At the same time, in its judicature, the Constitutional Tribunal autonomously understands the concept of criminal proceedings contained in Art. 42, paragraph 2 of the Polish Constitution, referring them not only to criminal proceedings *sensu stricto*, but to all proceedings concerning repressive nature, and thus such proceedings, the purpose of which is to subject the citizen to some form of punishment or some sanction"[7].

Therefore, the right to defense should be discussed from taking the first actual steps against a person, even without a formal decision. Performing procedural actions indicating that they were taken against a specific person in connection with the commission of a specific crime should, it seems, constitute the basis for assuming that proceedings have been initiated against them. In fact, this means acceptance of the previously rejected position that every person – and therefore also a trial suspect – if procedural steps against them are taken – should exercise the right to defense[8]. This determines the perception of actions directed against such people, creating a broader perspective in relation to their situation, which is also associated with the need to take into account the specificity of different types of proceedings. This is also related to the issue of procedural guarantees and their collision, which is extremely important in this aspect, that takes place with regard to participants in the proceedings, including, in particular, the defendant and authorities, which are provided with conditions for the execution of their tasks[9]. Obviously, this must be followed by the practice of the operation

[7] S. Steinborn, M. Wąsek-Wiaderek, *Moment uzyskania statusu biernej strony postępowania karnego z perspektywy konstytucyjnej i międzynarodowej* [in:] *Wokół gwarancji współczesnego procesu karnego. Księga Jubileuszowa Profesora Piotra Kruszyńskiego*, eds. M. Rogacka-Rzewnicka, H. Gajewska-Kraczkowska, B.T. Bieńkowska, Warszawa 2015, pp. 430–431 and the indicated there literature and judicial decisions. Cf. also: J. Skorupka, *O sprawiedliwości procesu karnego*, Warszawa 2013, p. 302: "Delay in presenting charges, when authority responsible for preliminary proceedings has at its disposal any incriminating evidence that would sufficiently justify the suspicion that a given person has committed a criminal Act is a violation of this Art. 313, § 1 of the Criminal Code and the standard of a fair trial. The interrogation of the suspect as a witness should also be considered as a contrary to this standard. There is no doubt, however, that the right to defense applies to all stages of the proceedings and is included in Art. 42, paragraph 2 of the Constitution of the Republic of Poland expression: «everyone against whom», it means that the right to defense depends not only from the phase *in personam* of the pre-trial stage, but is also done in the phase *in rem*. So where the constitutional right is applied to «all stages of proceedings», then this right applies also to the suspect. Hearing a suspect as a witness obliges him/her to testify (Art. 177, § 1 of the Criminal Code) against the criminal liability for declaring untruth or concealing the truth (Art. 190, § 1 of the Criminal Code) and makes it impossible to exercise the right to silence".

[8] P. Wiliński, *Analiza zakresu temporalnego zasady. Zasada prawa do obrony* [in:] *System Prawa Karnego Procesowego*, ed. P. Hofmański, Vol. III, part 2: *Zasady procesu karnego*, ed. P. Wiliński, p. 1546 and the indicated there literature and judicial decisions.

[9] Cf. f.e. T. Grzegorczyk, J. Tylman, *Polskie postępowanie karne*, Warszawa 2014, pp. 55–61; K. Marszał [in:] *Proces karny*, ed. J. Zagrodnik,Warszawa 2019, pp. 39–41; J. Skorupka [in:] *Proces karny*, ed. J. Skorupka, Warszawa 2018, pp. 100–108.

of the authorities, which must take into account not only the procedural but also the constitutional pattern. These issues cannot be treated separately.

The importance of these issues is especially visible when juxtaposing criminal liability with administrative liability, especially in the face of the developing regulations on administrative fines. From the point of view of the principles and guarantees of criminal proceedings, there is a completely different philosophy of proceeding and imposing sanctions, as well as the position of the subject against whom the proceedings are pending. By way of example, among the newest normative solutions, one can indicate the procedure for imposing administrative responsibility in connection with the adoption of the so-called anti-crisis shield, which is provided for in Art. 15, paragraph 1 and 2, that in the event of a breach of the obligation of hospitalization, quarantine or isolation in connection with the prevention, counteracting or combating COVID-19, imposed by the competent authority or resulting from the provisions of law, the state (poviat) sanitary inspector imposes on the person who violates such an obligation by way of the decision, an administrative fine of up to PLN 30,000. The finding of a breach of this obligation may take place in particular on the basis of the findings of the police, other state services or other authorized entities[10].

Administrative liability is specific and separate from other forms of criminal or civil liability. It takes place when the use of ailments is a consequence of committing a prohibited act in the form of the so-called administrative tort. This act constitutes an act or omission in breach of the orders or bans established in generally applicable normative acts or in administrative acts addressed individually to the administered entity, which entails the possibility or obligation of the administrative authority to impose sanctions against this entity[11]. "Inclusion in The Code of Administrative Procedure the amendment of 7 April 2017 on administrative fines is an expression of the legislator's desire to unify the rules of liability for the so-called administrative torts – an institution that has a long tradition in our country, although not necessarily of native origin. An element of this tradition was identifying these torts with offenses and qualifying liability in this regard as criminal administrative"[12].

Administrative liability is imposed in a different manner, implemented according to a regime of a different nature to that applied in matters of broadly understood liability for prohibited acts. There is a general part in the penal code

[10] The Act of 31 March 2020 on amending the Act on special solutions related to the prevention, counteraction and combating COVID-19, other infectious diseases and the resulting crisis situations and some other Acts (Dz.U. 2020, Item 568).

[11] M. Śliwa-Wajda, *Odpowiedzialność administracyjna ad personam osoby zarządzającej krajowym zakładem ubezpieczeń w świetle najnowszych zmian ustawy o ochronie konkurencji i konsumentów*, „Rozprawy Ubezpieczeniowe. Konsument na Rynku Usług Finansowych" 2019, No. 32, p. 64 and the literature indicated therein.

[12] A. Krawczyk [in:] *Kodeks postępowania administracyjnego. Komentarz*, eds. W. Chróścielewski, Z. Kmieciak, Warszawa 2019, p. 960 and the literature indicated therein.

which defines, among others, the concept of a crime, rules and conditions of criminal liability and its exclusion, penalties, penal measures and the rules of their assessment and limitation[13]. However, there is no analogy in administrative law regulations that would define the concept of an administrative sanction, the rules and conditions of liability for an administrative tort, exclusion of administrative liability for conduct that exhausts the features of an administrative tort or limitation of criminal record. There is no statutory definition of an administrative sanction here, as well as rules concerning the conditions of liability and the rules governing the assessment of penalties money for an administrative tort, which means that the Polish administrative law uses inconsistent terminology. In the case of administrative liability, the responsible entity may not only be the perpetrator of an administrative tort, but also another legal entity linked by a specific legal relationship with the perpetrator[14].

The special nature of administrative responsibility is manifested in its elements on the border of criminal law and administrative law. It should be noted that most of the acts establishing the administrative and criminal liability were not expressed as its premise. Thus, the legislator did not, as a rule, make the imposition of an administrative penalty for infringement of applicable provisions conditional on the determination of the fault of the entity subject to liability. According to the vast majority of provisions establishing financial administrative liability, the body is only required to establish the facts of the case during the proceedings, and in the event of a violation of the law, apply strictly defined sanctions. Thus, in the judicature it is assumed that the basis of penalties, the imposition of which does not depend on the occurrence of the perpetrator's fault, constitutes a construct of objective responsibility. Also, the acts often do not specify the premises leading to the perpetrator being subject to punishment, including that the authority's right to refrain from imposing a penalty or to minimize its scope[15]. Thus, "in criminal law, liability is based on the principle of guilt, including when it comes to financial penalties. On the other hand, in the case of an administrative tort for which financial penalties are imposed, this liability may be based on the principle of guilt, but more often it is objective liability, independent of the degree of culpability, and different from criminal liability. In administrative law, a fine is imposed on various entities (not only for natural persons), an administrative decision subject to appeal to the administrative court. It is a reaction of the state not for a criminal act, but for another violation of the

[13] M. Rogalski, *Odpowiedzialność karna a odpowiedzialność administracyjna*, „Ius Novum, special edition" 2014, pp. 66–67.

[14] *Ibidem.*

[15] D. Szumiło-Kulczycka, P. Czarnecki, P. Balcer, A. Leszczyńska, *Analiza obrazu normatywnego deliktów administracyjnych*, Warszawa 2016, pp. 84, 96 and indicated there judicial decisions and literature.

legal order. It is not imposed on behalf of the state by an independent court in a special proceeding in which the defendant is guaranteed compliance with the rights pursuant under Art. 42 of the Constitution and ensures the impartiality of the decision"[16].

The provisions which determine liability for committing specific infringements are not treated by the legislator as criminal provisions, and financial penalties as fines. At the same time, the amount of penalties that may be imposed on natural persons by an administrative body, often significantly exceeds the amount of the fine specified in the provisions of the Petty Offenses Code, and sometimes also the maximum amount of the fine provided for in the Penal Code[17]. According to Art. 189b of The Code of Administrative Procedure[18] an administrative fine is understood as a financial penalty specified in the act, imposed by a public administration body, by way of a decision, as a result of a breach of the law consisting in failure to comply with an obligation or breach of the prohibition imposed on a natural person, legal person or organizational unit without legal personality[19]. Article 189d of the Code of Administrative Procedure sets out the directives on the level of this penalty. Thus, when imposing an administrative fine, a public administration body takes into account: 1) the importance and circumstances of the violation of the law, in particular the need to protect life or health, protect property in significant quantities or protect important public interest or extremely important interest of the party, and the duration of the violation; 2) the frequency of past failure or breach of the same type of prohibition as failure to comply with the obligation or violation of the prohibition, as a result of which a penalty is to be imposed; 3) prior punishment for the same behavior for a crime, tax offense, misdemeanor or tax offense; 4) the degree of contribution of the party on which the administrative fine is imposed to the infringement of the law; 5) actions taken by the party voluntarily to avoid the consequences of violating the law; 6) the amount of the benefit that the party has achieved or the loss it has avoided; 7) in the case of a natural person – the personal conditions of the party on which the administrative fine is imposed. The provision of Art. 189d of The Code of Administrative Procedure applies only to the imposition of an administrative fine, i.e. to determine its charge in the amount of money. However, it does not apply to the imposition of this penal-

[16] M. Rogalski, *Odpowiedzialność karna*…, p. 67.

[17] D. Szumiło-Kulczycka, P. Czarnecki, P. Balcer, A. Leszczyńska, *Analiza obrazu*…, pp. 75, 158.

[18] The Act of 14 June 1960 – the Code of Administrative Procedure (Dz.U. 2020, Item 256 as amended).

[19] In this definition, therefore, we can distinguish three elements which create administrative financial penalty, that is: a financial penalty, specified in the Act, imposed by a public administration body in the form of a decision, as a result of a breach of the law consisting in: failure to fulfill an obligation or breach of a prohibition, imposed on a physical, legal person or organizational unit without legal personality, cf. A. Wróbel [in:] A. Wróbel, M. Jaśkowska, *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2018, p. 1198.

ty[20]. "The catalog of circumstances to be taken into account by the administration authority when imposing a sentence is closed. Taking them into account is obligatory (the authority «takes into account»), and these grounds should be applied jointly, unless, due to the nature of the act, some of them turn out to be outdated in the circumstances of a specific case. In that case, however, it should be indicated in the justification of the decision to impose a fine"[21].

As regards the procedure, there is a general rule that, in the absence of different regulations, the provisions of the Code of Administrative Procedure apply[22]. The administrative procedure consists of two stages. Proceedings before the first-instance bodies are characterized by the principle of legality, according to which the authorized body is obliged to initiate proceedings, establish the facts of the case and, in the event of a violation of the law, apply strictly defined sanctions.

The imposition of a penalty takes the form of a procedural decision, which may be issued in circumstances specified in a particular statutory provision. These enumerations form a closed catalog and cannot be specified by the authority in any way.

A party to the proceedings is an entity whose legal interest or obligation relates to the proceedings. It may act individually or together with an attorney, which may be any natural person with full legal capacity. The authority conducts a hearing ex officio or at the request of a party in the course of proceedings in each case in which it leads to the acceleration or simplification of the procedure or when it is required by law. However, authority must conduct a hearing in a situation where there is a need to reconcile the interests of the parties, or when it is necessary to clarify the case with the participation of witnesses or experts, or by inspection. The authority is obliged to collect and consider the collected evidence in an comprehensive way. Evidence can be anything that may contribute to the clarification of the case, and is not contrary to the law, especially documents, testimonies of witnesses, opinions of experts and inspections. At the same time, a party is entitled to submit requests for the taking of evidence, which the authority should take into account if the subject of evidence is a circumstance significant for the resolution of the case. The party also has the right to participate in the taking of evidence, to ask witnesses, experts and parties questions, as well as to testify[23].

Summing up, it should be noted that the regimes of broadly understood penal and administrative responsibility differ in a fundamental way. Therefore, a question may be asked whether, in the case of administrative liability, the material grounds and procedural rules provide sufficient protection to entities on which

[20] *Ibidem*, p. 1213.

[21] A. Krawczyk [in:] *Kodeks postępowania administracyjnego. Komentarz*, eds. W. Chróścielewski, Z. Kmieciak, Warszawa 2019, p. 991.

[22] D. Szumiło-Kulczycka, P. Czarnecki, P. Balcer, A. Leszczyńska, *Analiza obrazu*…, pp. 99–102.

[23] *Ibidem*.

sanctions are imposed, especially since their amount, as indicated, is often higher than fines punishable not only for committing offenses but also crimes. In a criminal trial *sensu largo*, the guarantees of the person against whom the proceedings are conducted are of a fundamental nature, resulting from the main procedural principles. In case of administrative responsibility, it does not have such a developed system, for example there is no presumption of innocence. Therefore, the direction of the legislator's expansion of the scope of administrative torts should be considered debatable, as the situation of entities against whom administrative fines are to be applied is not secured as it is in a criminal trial *sensu largo*.

Obviously, the above opinion should not be seen as an expression of general disapproval of the institution of administrative sanctions. In many situations, they are a useful instrument for achieving goals by state bodies. However, the replacement of penal liability with administrative torts should be considered controversial. The assessment of this phenomenon, made even from the perspective of the main procedural principles and guarantees of the accused (and also the accused), including in particular the principles of the right to defense and the presumption of innocence, must raise reservations.

These, only exemplary circumstances, not only show the differences between the two types of responsibility presented, but also testify to the importance of the solutions shaping the system of guiding principles and guarantees of the person against whom the proceedings are pending for a fair criminal trial *sensu largo*.

Bibliography

Dudka K., *Stosowanie przepisów k.p.k. w postępowaniu dyscyplinarnym w stosunku do nauczycieli akademickich* [in:] *Węzłowe problemy procesu karnego*, ed. P. Hofmański, Warszawa 2010.

Grzegorczyk T., Tylman J., *Polskie postępowanie karne*, Warszawa 2014.

Kodeks postępowania administracyjnego. Komentarz, eds. W. Chróścielewski, Z. Kmieciak, Warszawa 2019.

Proces karny, ed. J. Skorupka, Warszawa 2018.

Proces karny, ed. J. Zagrodnik, Warszawa 2019.

Rogalski M., *Odpowiedzialność karna a odpowiedzialność administracyjna*, „Ius Novum, special edition" 2014.

Steinborn S., Wąsek-Wiaderek M., *Moment uzyskania statusu biernej strony postępowania karnego z perspektywy konstytucyjnej i międzynarodowej* [in:] *Wokół gwarancji współczesnego procesu karnego. Księga Jubileuszowa Profesora Piotra Kruszyńskiego*, eds. M. Rogacka-Rzewnicka, H. Gajewska-Kraczkowska, B.T. Bieńkowska,Warszawa 2015.

Skorupka J., *O sprawiedliwości procesu karnego*, Warszawa 2013.

Szumiło-Kulczycka D., Czarnecki P., Balcer P., Leszczyńska A., *Analiza obrazu normatywnego deliktów administracyjnych*, Warszawa 2016.

Śliwa-Wajda M., *Odpowiedzialność administracyjna ad personam osoby zarządzającej krajowym zakładem ubezpieczeń w świetle najnowszych zmian ustawy o ochronie konkurencji i konsumentów*, „Rozprawy Ubezpieczeniowe. Konsument na Rynku Usług Finansowych" 2019, No. 32.

Waltoś S., *Naczelne zasady procesu karnego*, Warszawa 1999.
Wiliński P., *Analiza zakresu temporalnego zasady. Zasada prawa do obrony* [in:] *System Prawa Karnego Procesowego*, ed. P. Hofmański, Vol. III, part 1: *Zasady procesu karnego*, red. P. Wiliński.
Wiliński P., *Doniosłość zasad w procesie karnym. Fenomen zasad procesu karnego* [in:] *System Prawa Karnego Procesowego*, ed. P. Hofmański, Vol. III, part 1: *Zasady procesu karnego*, ed. P. Wiliński.
Wróbel A., Jaśkowska M., *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2018.

Summary

The matter of procedural rules is one of the fundamental issues of criminal proceedings. Defining their catalog, content and mutual relations determines the model of criminal proceedings and indicates its priorities. Treatment of procedural principles proves the nature of the procedure, showing the values that shape it. The most important values expressed by law of criminal proceedings are related to procedural principles.

Keywords: procedural rules, accused, administrative responsibility, criminal proceedings

WYBRANE ZASADY PROCESOWE DOTYCZĄCE OSKARŻONEGO A REŻIM ODPOWIEDZIALNOŚCI ADMINISTRACYJNEJ

Streszczenie

Problematyka zasad procesowych należy do fundamentalnych kwestii postępowania karnego. Określenie ich katalogu, treści i wzajemnych relacji determinuje model postępowania karnego i wskazuje na obowiązujące w nim priorytety. Ujęcie zasad procesowych świadczy o charakterze postępowania, wskazując na wartości, które je kształtują. Z zasadami procesowymi wiążą się najważniejsze wartości wyrażone przez przepisy karnoprocesowe. Tym właśnie zagadnieniem będzie poświęcony artykuł.

Słowa kluczowe: zasady procesowe, oskarżony, odpowiedzialność administracyjna, postępowanie karne

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COOPERATION OF THE POLICE WITH NON-GOVERNMENTAL ORGANIZATIONS IN THE FIELD OF SECURITY AND PUBLIC ORDER

Introduction

A modern democratic country based on the rule of law is a very complex and complicated system of bodies, units and entities responsible for performing public tasks. As part of the separation of powers into the legislative, executive and judicial powers, activity is conducted by many entities connected with each other by various relations of dependence, interaction and cooperation. The most diverse system of connections consists of bodies, units and institutions of the executive power and public administration. The entities that make up such a system are bodies and units of the state, government and local government administration. This system is supported by private entities and non-governmental organizations. Due to the continuous social and civilization development, the system of entities responsible for the organization and functioning of the state is being constantly modernized and changed, in terms of the increasingly efficient and incessantly growing demand for more efficient implementation of public tasks. Social expectations also increase in a systematic way, in the matter of even higher level of safety and public order. This process requires an extremely rational and effective organization.

The concept of cooperation in public administration has been known for a long time. It is primarily related to the specialization determined by the development of civilization and diversity, as well as the continuous development of social relations and expectations. From a sociological point of view, cooperation means a social relationship based on a joint action and mutual assistance in achieving a specific aim. "Collaboration is essentially nothing else but an action aimed at achieving identical or compatible objects. Therefore, instead of talking about co-

operation as a necessary condition of the organization, one could mention a common object or compatible[1] objects". Some systemic normative acts contain provisions that oblige public entities to cooperate with other entities.

In the science of administrative law, cooperation is recognized as a non-binding legal form of administration and constitutes the main element of concluded administrative agreements[2]. The concept of cooperation and coordination is found both in the doctrine and in normative acts. These terms, especially in the common language, are treated as synonyms. However, there are actually some differences between them. Collaboration is defined as a harmonized activity of individuals or groups of people performing parts or elements of a given task. Coordination usually takes place in complex and complicated tasks, where a certain primacy of a specific authority over the coordinated bodies or entities is required. The activities of the coordinating body are aimed at optimizing the achievement of the assumed common object. It ought to be emphasized that in a joint action there is an equality of cooperating entities. Cooperation is a form of functional contact between non-subordinate units, where these units are considered as equal partners. However, due to the purpose of cooperation, often does the element of coordination[3] occur. Owing to the complexity of the assumed objects and the subject of cooperation, the maintenance of the full independence of the cooperating institutions is extremely difficult and even unnecessary. Such an approach to the aforementioned cooperation is even more justified when coordination elements are indispensable in order to achieve a specific object. It is especially visible in a situation when the cooperating body (entity) is obliged to achieve specific goals by cooperation on the basis of the provisions of the Act.

The scope of tasks and forms of activity of the Police as determinants of cooperation with non-governmental organizations

Today there are over 200 countries in the world, which despite the integration, unification and globalization processes, significantly differ in the level of civilization and social development, what has its consequences in the standard of living of individual societies and its individual units. The existence of social differences in particular countries is conditioned by historical, cultural, and primarily by political systems of individual states. While entering into the field of administrative law and inextricably connected with it public administration, it should be

[1] J. Zieleniewski, *Organizacja zespołów ludzkich. Wstęp do teorii organizacji i kierowania*, Warszawa 1978, p. 118.

[2] Cf. J. Starościak, *Prawne formy i metody działania administracji* [in:] *System Prawa Administracyjnego*, Vol. III, ed. T. Rabska, J. Łętowski, Wrocław 1978, p. 45 n.

[3] Z. Leoński, *Nauka administracji*, Warszawa 2000, p. 126 n.

emphasized that the quality of meeting the needs of society depends on the public administration, which is a very important element of executive power. In the axiological sphere, the implementation of public tasks by the government must be based on a system of values, developed and adopted by the authorities of states and society, adequate to the level of civilization and technological development. The catalog of fundamental freedoms and human rights, confirmed in the Acts of international law, should set the direction of activities of the authorities of each state[4].

Referring to the subject of this publication, the importance of general principles of systemic administrative law and its impact on the organization and functioning of the public administration[5] should be emphasized. These include the following principles: subsidiarity; competence; administrative unification; efficiency and effectiveness of administration activities; control and supervision; decentralization; deconcentration; proportionality; protection of human dignity and the right to good administration. The aforementioned principles affect the scope and possible forms of cooperation in the implementation of public goals and tasks.

An analysis of normative acts, regulating the functioning and tasks of the Police and non-governmental organizations, indicates that there are few regulations which require cooperation between these entities. Needless to say, this does not mean that the aforementioned entities will undertake cooperation only when the legal provision expressly obliges them to do so. The basis for cooperation may then be general competence standards originating from the aims, principles of operation of administration and the basic statutory tasks of these entities. At the time, these activities will be based on the principle of voluntary and parity, without imperious elements of coordination. Such established rules of cooperation, supported by the concluded administrative agreement, give cooperating entities great opportunities to act without fear of violating the rule of law, pursuant to Art. 7 of the Constitution of the Republic of Poland[6]. The objective scope of cooperation between specific entities depends on many premises, and above all on the type of performed public tasks, their nature and importance for the state and society[7].

The cooperation of the Police with non-governmental organizations in the field of security and public order, presented only on the basis of the observed practice, covers a wide range of activities, what has to do with the tasks of the Police. The institutional status of this formation is defined by the Act of 6 April 1990 on

[4] J. Łukasiewicz, *Podstawowe pojęcia z zakresu nauki administracji* [in:] *Kompendium wiedzy administratywisty*, ed. S. Wrzosek, Lublin 2008, p. 87 n.

[5] *Prawo administracyjne*, eds. M. Zdyb, J. Stelmasiak, Warszawa 2020, p. 133 n.

[6] Dz.U. 1997, No. 78, Item 483.

[7] Cf. E. Ura, *Prawne zagadnienia ochrony osób i mienia*, Rzeszów 1998, pp. 124–125.

the Police[8]. The tasks of the Police result from Art. 1, section 1 of the Act, which defines the Police as a uniformed and armed formation serving the public and intended to protect safety of all citizens and maintain public safety and order. It can be said that these are the main aims of the Police, which were developed in Art. 1, section 2 of the Act. Arising from the provision that the basic tasks of the Police include: protection of human life and health and protection of property against unlawful attacks violating these goods; protection of public safety and order; conducting counter-terrorist activities; detection of crimes and offenses and prosecution of its perpetrators; control of compliance with order and administrative regulations related to the public activity or its applicability in public places. The aforementioned tasks itself indicate their universal character, which outlines a wide range of the Police's activities. Other than those referred to above is a sentence defined as "initiating and organizing activities aimed at preventing the commission of crimes and offenses as well as crime-related phenomena and cooperation in this field with the state and local government bodies and social organizations". This regulation *expressis verbis* provides a legal basis for cooperation with social organizations and non-governmental organizations within the same concept.

The Police authorities contain many agreements on cooperation and joint action with various government and local government administration bodies, as well as with social organizations for which security and public order constitute a statutory aim that determines their creation and functioning[9]. They also include the broadly understood social and organizational activity as an ineffective form of action, among others, by defining such tasks as an organization of joint conferences, patrols, implementation of preventive programs, participation in community meetings or taking preventive actions.

When assessing the scope of the Police cooperation and its importance for the protection of public safety and order, it is also necessary to pay attention to the organizational structure of the Police, its personnel and human resources. The police are the largest centralized formation hiring around 100,000 police officers and about 25,000 employees. With the large area of deconcentration, the Police have its own units in voivodeships, poviats and municipalities. It is the only government administration organization with its agendas at the lowest level of the fundamental territorial division[10]. A significant possibility of direct contact with citizens and local communities gives it great opportunities to shape local security in cooperation with non-governmental organizations.

[8] Dz.U. 2020, Item 360 as amended.

[9] More: E. Ura, S. Pieprzny, *Rola porozumień administracyjnych w działalności organów bezpieczeństwa i porządku publicznego* [in:] *Podmioty administracji publicznej i prawne formy ich działania. Studia i materiały z konferencji jubileuszowej Profesora Eugeniusza Ochendowskiego*, Toruń 2005, p. 421 n.; J. Korczak, *Niewładcze formy działania Policji* [in:] *Policja. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019, p. 108 i n.

[10] S. Pieprzny, *Policja –organizacja i funkcjonowanie*, Warszawa 2011, p. 18 n.

Legal and organizational possibilities of cooperation of non-governmental organizations in the sphere of public safety and order

The activity of non-governmental organizations in Poland after the political transformations in 1990 has not reached a level being comparable to the European Union countries. Without going into the specifics of the causes of this phenomenon, in Poland – as it appears from the available data – there are currently 92,7000 active non-governmental organizations, and 81,100 of them cooperated with other entities. The main partners for most of them were public entities (80.4%), non-profit sector partners (51.8%) and commercial entities (32.5%)[11]. The number of participating NGOs is difficult to establish in terms of activities for the protection of public safety and order. In the few publications concerning this sphere of activity it is estimated that about 10% of non-governmental organizations have an activity for safety and public order in their statutes and regulations. As you can notice, there are potentially great opportunities for business development in this sphere.

The enactment of the Act of 24 April 2003 on Public Benefit and Volunteer Work was of great importance for the activities of non-governmental organizations[12]. The aforementioned Act regulated, among others, principles of conducting public service activities by the non-governmental organizations in the field of public tasks, cooperation of public administration bodies with non-governmental organizations; obtaining the status of public benefit organization by non-governmental organizations and the functioning of public benefit organizations. This Act also defines non-governmental organizations. The enactment of this Act created great opportunities for fundraising by non-governmental organizations.

While exemplifying selected forms of activity of non-governmental organizations in the field of security and public order, it ought to mention such activities as: rescue; fire and flood protection; road safety; environmental protection and nature protection.

Rescue means activities carried out at all levels of the state organization in times of peace, crisis and war, with the use of various methods, forces and means. Its aim is to save all citizens and their material goods[13]. Due to the source or method of financing, rescue services are divided into state, social and commercial. In the field of rescue, there is an extremely noticeable participation of non-

[11] *Współpraca organizacji non-profit z innymi podmiotami w 2017 r.*, http://stat.gov.pl (15.06.2020).

[12] Dz.U. 2019, Item 688 as amended.

[13] *Obrona narodowa w tworzeniu bezpieczeństwa III RP*, ed. R. Jakubczak, Warszawa 2003, p. 340.

-governmental organizations. For example, mountain and water rescue is dominated by non-governmental organizations operating within the Mountain Volunteer Search and Rescue (GOPR). Volunteers are the heart of this rescue. Currently, there are 114 professional rescuers and 837 volunteers in the GOPR[14]. The situation is similar in water rescue, where most rescuers volunteer. There are currently about 120 organizations in Poland which are in charge of water rescue under the Water Volunteer Search and Rescue (WOPR). Voluntary fire brigades are undeniably a phenomenon, for currently there are about 16,000 of them, and they gather over 700, 000 members. 4,376 TSO units with 195,000 rescuers were included in the National Rescue and Fire-Fighting System after meeting many strict requirements[15]. In the current conditions, it is difficult to imagine the functioning of the rescue service without the participation of non-governmental organizations.

Conclusion

Cooperation in all spheres of public life is essential in achieving the assumed objects and tasks. It is extremely important in public administration, which is a very extensive and complicated system of tasks, forms and methods of operation and – in the subjective sense – a system of state and local government bodies and units, social and non-governmental organizations and private entities. All of these related entities are connected with each other by dependence, supervision, control and bonds of cooperation, join of action and coordination. The purpose of such a system of connections is to serve, in the praxeological plane, optimization of activities and improvement of the effectiveness and efficiency of activities aimed at better meeting of social needs.

Protection of public safety and order in the overall tasks of public administration is one of the most important segments of its activity. Security and public order are the basic determinants of proper social development. The incessantly growing needs in the field of civil security make it necessary to constantly and effectively responding emergencies related to such a security.

Public authorities, being aware of their responsibility on behalf of the state for the welfare of security, undertake various activities in order to make social needs in this area. The cost of such activities is extremely high that even rich countries are unable to implement them using only public funds. The burden of responsibility for safety and public order is addressed not only to local government

[14] www.gopr.pl (15.06.2020).

[15] S. Pieprzny, *Wpływ ochotniczych straży pożarnych na rozwój lokalny* [in:] *Wybrane aspekty realizacji zrównoważonego rozwoju samorządu terytorialnego*, eds. M. Sitek, P. Zientarski, Warszawa 2019, p. 115 n.

units and commercial entities (e.g. companies for the protection of persons and property), but also social organizations, and especially non-governmental organizations. Non-governmental organizations in which the civic factor plays the most important role have the greatest social acceptance in such a division of public tasks.

After the enactment of the Act on Public Benefit and Volunteer Work, there are great opportunities for dynamic development of non-governmental organizations and their involvement in the implementation of tasks not only in the sphere of public safety and order, but also many other public duties crucial for society. The police, as the largest governmental organization operating through hundreds of its bodies and units, have high potential for inspiring cooperation with non-governmental organizations, mainly in the field of local security. An excellent role model could be voluntary fire brigades, owing to its unusual possibilities and wide range of activities.

Bibliography

Korczak J., *Niewładcze formy działania Policji* [in:] *Policja. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019.

Leoński Z., *Nauka administracji*, Warszawa 2000.

Łukasiewicz J., *Podstawowe pojęcia z zakresu nauki administracji* [in:] *Kompendium wiedzy administratywisty*, ed. S. Wrzosek, Lublin 2008.

Obrona narodowa w tworzeniu bezpieczeństwa III RP, ed. R. Jakubczak, Warszawa 2003.

Pieprzny S., *Cooperation between the Police and organami kontroli skarbowej* [in:] *Systemy podatkowe w Polsce i na Ukrainie a struktura organizacyjna administracji podatkowych*, Rzeszów–Rabe 2003.

Pieprzny S., *Policja. Organizacja i funkcjonowanie*, Warszawa 2011.

Pieprzny S., *Wpływ ochotniczych straży pożarnych na rozwój lokalny* [in:] *Wybrane aspekty realizacji zrównoważonego rozwoju samorządu terytorialnego*, eds. M. Sitek, P. Zientarski, Warszawa 2019.

Prawo administracyjne, eds. M. Zdyb, J. Stelmasiak, Warszawa 2020.

Ura E., *Prawne zagadnienia ochrony osób i mienia*, Rzeszów 1998.

Ura E., Pieprzny S., *Rola porozumień administracyjnych w działalności organów bezpieczeństwa i porządku publicznego* [in:] *Podmioty administracji publicznej i prawne formy ich działania. Studia i materiały z konferencji jubileuszowej Profesora Eugeniusza Ochendowskiego*, Toruń 2005.

Zieleniewski J., *Organizacja zespołów ludzkich. Wstęp do teorii organizacji i kierowania*, Warszawa 1978.

Summary

The article highlights the basic issues related to the cooperation of the Police with non-governmental organizations in the field of security and public order. Such a cooperation results not only from the fact that the Police implement tasks in the aforementioned field, based on the

general competence norm, but also that they perform many tasks in the form of non-authoritative activities, typical for social organizations. Both the legal and actual possibilities of cooperation in these entities were indicated and examples of such interaction were highlighted. The role of legal solutions was also emphasized, according to the Act of 24 April 2003 about public benefit activities and voluntary work.

Keywords: Police, non-governmental organizations, volunteering, public safety, non-executive functions, cooperation

WSPÓŁDZIAŁANIE POLICJI Z ORGANIZACJAMI POZARZĄDOWYMI W SFERZE BEZPIECZEŃSTWA I PORZĄDKU PUBLICZNEGO

Streszczenie

W artykule zasygnalizowane zostały podstawowe zagadnienia związane ze współdziałaniem Policji z organizacjami pozarządowymi w sferze bezpieczeństwa i porządku publicznego. Współdziałanie to wynika nie tylko z faktu, że Policja realizuje zadania w tej sferze w oparciu o ogólną normę kompetencyjną, ale również i z tego, że wiele z zadań wykonuje w formie działań niewładczych typowych dla organizacji społecznych. Wskazano też na prawne i faktyczne możliwości współdziałania tych podmiotów oraz zwrócono uwagę na przykłady tego współdziałania. Podkreślona została rola rozwiązań prawnych zawartych w ustawie z dnia 24 kwietnia 2003 r. o działalności pożytku publicznego i wolontariacie.

Słowa kluczowe: Policja, organizacje pozarządowe, wolontariat, bezpieczeństwo publiczne, niewładcze formy działania, współdziałanie

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COOPERATION AND COLLABORATION BETWEEN THE POLISH POLICE AND ARMED FORCES OF THE REPUBLIC OF POLAND IN TERMS OF ENSURING SECURITY AND PUBLIC ORDER

Introduction

Ensuring security and public order is one of the most important constitutional objectives of the State and at the same time the task of many public authorities[1]. The Police is leading, uniformed and armed formation in a system of public safety authorities whose overriding operating objective, determined by the legislator is to serve the society by protecting people's safety and maintaining security and public order[2]. In accordance with Art. 2, paragraph 10 of the Act on the Police, to its basic tasks, within the framework of implementation of the aforementioned purpose, belong:

- protection of human life, health and property against unlawful attacks affecting these goods,
- protection of security and public order, including ensuring peace in public places and in public transport and public communication, road traffic and waters intended for general use,
- initiating and organizing activities aimed at preventing committing crimes and offences and cooperation in this area with state and local authorities and social organizations,
- counter-terrorism activities within the meaning of the Act of 10 June 2016 on Counter-terrorism Activities (Dz.U. 2018, Items 452, 650 and 730),

[1] E. Olejniczak-Szałowska *Prawny obowiązek współdziałania Policji z innymi służbami w sferze ochrony bezpieczeństwa i porządku publicznego* [in:] *Policja. Prawne formy działania*, eds. E.Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019, p. 36.

[2] Art. 1 of the Act of 6 April 1990 on the Police (Dz.U. 2020, Item 360 as amended), hereinafter referred to as: the Act on the Police.

- detection of crimes and offences and prosecuting their perpetrators,
- protection of premises which are the seat of the Council of Ministers members, with the exception of the premises serving the Minister of National Defense and the Minister of Justice, designated by the Minister of Interior Affairs,
- supervision of specialized armed protective formations to the extent specified in separate regulations,
- monitoring of compliance with law and administrative regulations related to public activities or binding in public places,
- cooperation with the police forces of other countries and their international organizations, as well as with the bodies and institutions of the European Union on the basis of international agreements, settlements and separate rules,
- processing of criminal information, including personal data,
- maintaining data sets containing information collected by authorized authorities on persons' fingerprints, unidentified fingerprints from crime scenes and the results of deoxyribonucleic acid analysis (DNA).

However, in carrying out tasks related to such vast area of activity, the Police does not have to be unassisted. Nowadays, in the context of the science of administrative law, praxeology, organization theory or administration science, there is an unquestionable opinion that administrative entities, in the process of carrying out public tasks, should cooperate with each other[3]. Natural partner for the Police is the army, despite the fact that the main task of the Armed Forces of the Republic of Poland is to protect the State and society from external military threat. According to P. Hac, naturalness of the Police and army cooperation results from, inter alia, hierarchical structure of the Armed Forces, barracking of soldiers and their availability, maneuverability of subdivisions, as well as the possibility of using specialized equipment. Taking into consideration the fact, that the Police may also not have any real capacity to counter given threat (e.g. combating aircraft violence), it may be necessary to provide military support[4].

This study aims to characterize formal foundations and scope of cooperation between the Police and the Armed Forces of the Republic of Poland.

The concept of cooperation

Cooperation in semantic sense means working together with someone else, participating in someone else's activity, acting in agreement, etc. It shall be understood as acting by many entities aimed at achieving identical or consistent, or

[3] E. Olejniczak-Szałowska, *Prawny obowiązek*…, p. 34.

[4] P. Hac *Formalne podstawy współdziałania Sił Zbrojnych RP w zakresie zapewnienia bezpieczeństwa i porządku prawnego*, „Kwartalnik Policyjny" 2017, No. 1(40), p. 98.

at least convergent objectives. It is noted that cooperating entities operate in related manner[5]. Interaction in general sense is identified with positive collaboration, cooperation[6]. S. Biernat emphasizes that, where the solution to a given problem is not fully within the scope of a single entity, but within the scope of two or more entities and the scopes of their operation intersect, it is justified to cooperate by them in this field[7]. E. Olejniczak-Szałowska points out that cooperation enables or facilitates achievement of the objectives set out by law and performance of public tasks that exceed the capacity (competence) of various administrative entities[8]. It is a form of increasing the activity of the tasks performed, minimizing costs and reaching a wider group of recipients or responding quicker for threats (violations), which allows to optimize the use of forces and means at the disposal of different authorities[9].

The effect of cooperation is achieving objectives by public entities more effectively. A key objective of public administration is a common good translated into the good of man. This objective includes many goods and values that must be protected and multiplied, and which are articulated primarily in the Constitution. Among the goods protected are, first of all, human dignity, its life and health, high in the hierarchy of values is the value in the form of public order and security[10]. Public security is "actual state inside the State which enables – without being exposed to harm from any source – normal functioning of a State organization and realization of its interests, preservation of life, health and property of individuals living in that organization, and using by these individuals the rights and freedoms guaranteed by the Constitution and other laws"[11]. Public policy means a state characterized by respect for orders, prohibitions and rules of behavior in public places[12]. In the system of entities carrying out protecting security and public order tasks the Police, which is supported in performing these tasks by other entities which are complementary to the tasks of the Police in this regard has a special role.

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[5] E. Olejniczak-Szałowska, *Prawny obowiązek*…, p. 39.

[6] More regarding distinction between these terms see: E. Ura, S. Pieprzny, *Rola porozumień administracyjnych w działalności organów bezpieczeństwa i porządku publicznego* [in:] *Podmioty administracji publicznej i prawne formy ich działania. Studia i materiały z Konferencji Naukowej poświęconej Jubileuszowi 80-tych urodzin Profesora Eugeniusza Ochendowskiego*, Toruń 2005, p. 433.

[7] S. Biernat, *Działanie wspólne w administracji państwowej*, Wrocław–Warszawa–Kraków–Gdańsk 1979, p. 38.

[8] E. Olejniczak-Szałowska, *Prawny obowiązek*…, p. 40.

[9] M. Czuryk, *Zakres działania policji oraz obszary jej współdziałania z innymi podmiotami* [in:] *Prawo policyjne*, eds. M. Czuryk, M. Karpiuk, J. Kostrubiec, Warszawa 2014, p. 65.

[10] E. Olejniczak-Szałowska, *Prawny obowiązek*…, p. 35.

[11] J. Zaborowski, *Prawne środki zapewnienia bezpieczeństwa i porządku publicznego*, Warszawa 1977, p. 11.

[12] E. Olejniczak-Szałowska, *Prawny obowiązek*…, p. 39.

Cooperation and collaboration of the Police and the Armed Forces of the Republic of Poland

The source of legal relations regarding cooperation of the Police with other entities, including special services, inspections and guards, is mainly substantive law: Acts and Regulations of the competent ministers issued on the basis of a legislative delegation, but also Constitutional law. In some cases, the Regulation explicitly provides the possibility of further clarifying rules of cooperation in the way of agreement[13].

The basic legal act regulating use of the Armed Forces of the Republic of Poland is the Constitution of the Republic of Poland from 1997[14]. In accordance with the Art. 26 of the Constitution, the Armed Forces of the Republic of Poland "serves to protect the independence of the State and the integrity of its territory and to ensure the security and integrity of its borders". As P. Hac points out, this task, expressed only by the indeterminate expression "State security", without indicating the need for the military to assist other formations, does not expressly give basis for the use of soldiers to ensure security and public order within the country. It should be assumed, however, that the phrase used concerns both the external and internal security of the State, and in this respect may form the basis for action also in the second of these areas[15]. In addition, the Art. 146, paragraph 4 of the Constitution, defining the role of the Council of Ministers (and therefore the Minister of National Defense) including ensuring internal security of the State and public order (point 7) may be regarded as a legal rule conferring the power to act jointly between the Armed Forces of the Republic of Poland and the Police.

In the Art. 3 of the Act of 21 November 1967 on the General Duty of Defense of the Republic of Poland[16], the military's tasks are listed, i.e. "uphold the sovereignty and independence of the Polish People and its security and peace", as well as the areas in which the Armed Forces of the Republic of Poland can take part:

- combating natural disasters and eliminating their effects,
- counter-terrorism and property protection activities,
- search and rescue actions and saving or protection of human health and life,
- clearing areas of explosives and hazardous materials of military origin, as well as their disposal, and also
- implementation of crisis management tasks".

Formulation the tasks catalogue of the Polish Armed Forces in this way indicates that the legislator has broadly outlined the area of their operation, anticipating their participation in the internal security system.

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[13] *Ibidem*.

[14] Constitution of the Republic of Poland of 2 April 1997 (Dz.U. No 78, Item 483 as amended).

[15] P. Hac, *Formalne podstawy*…, p. 100.

[16] Dz.U. 2019, Item 1541 as amended: Dz.U. 2018, Item 2245; 2020, Item 374.

It should be emphasized that the Armed Forces of the Republic of Poland can support other services, guards and inspections, including the Police, both in emergencies states (natural disaster state, state of emergency) and without the introduction of these states.

Undoubtedly, one of more important normative act concerning cooperation of the Polish Armed Forces with the Police, without the introduction of emergencies states, is the Act on the Police. Article 18 of that Act sets out the cases and the procedure for use the units and sub-units of the army to support the Police. The possibility of using them arises, if the use of armed Police units and sub-units is insufficient. In such situation, the President of the Republic of Poland may, at the request of the Prime Minister, decide to use units and sub-units of the Armed Forces in the event of: 1) general danger to life, health or freedom of citizens; 2) direct threat to property of considerable proportions; 3) direct threat of facilities or installations important for the security or defense of the State, the headquarters of central state or judicial authorities, economic or cultural facilities, diplomatic representations and consular posts of foreign states or international organizations, as well as facilities supervised by armed protection formation, threat of terrorist offence likely to endanger the life or health of participants in cultural, sporting or religious events, including gatherings or mass events. At the same time, in the event of threat to security and public order, when the Police forces are insufficient, the Prime Minister, at the request of the Minister of Interior and Administration agreed with the Minister of National Defense, may order to use of the Military Police to support the Police.

Regulations regarding the conditions and scope of the above cooperation are contained in the Regulation of the Council of Ministers of 21 July 2016 on the use of units and subunits of the Police and Armed Forces of the Republic of Poland in the event of threat to public security or disturbance of public order[17]. This Regulation defines, in particular, the conditions and way of use of units and subunits of the Polish Police and Armed Forces in the event of threat to public security or disturbance of public order, the way in which the activities of these units are coordinated and the procedure for exchanging information and ways of logistical support of the police activities carried out with the assistance of the units and sub-units of the Armed Forces of the Republic of Poland.

It should be noted that the cooperation of the Police with the Armed Forces of the Republic of Poland takes place in cases where combating and countering belong to the Police tasks (related to people safety protection and the maintenance of security and public order). However, due to their specific nature, extent of threat or the need for immediate action, the intervention of the Police may not be sufficient in their case. In this context, use of the Armed Forces is therefore of

[17] Dz.U. Item 1090.

a subsidiary nature, it takes place only if insufficient usefulness of Police units or sub-units is found, resulting from the degree of threat to public security or disturbance of public order[18].

Use of the Polish Armed Forces to support the Police was also provided for in the Act of 10 June 2016 on counter-terrorism activities[19], in case of possibility of occurrence an attack of terrorist nature or occurring such attack. Use of units and sub-units of the Armed Forces of the Republic of Poland requires a decision of the Minister of National Defense at the request of the Minister responsible for the Interior Affairs, which may be repealed or amended by the President of the Republic of Poland. The Anti-terrorist Act allows the possibility of using Polish Armed Forces only in case of third or fourth alert level, i.e. CHARLIE (CHARLIE-CRP) and DELTA (DELTA-CRP). The condition for use under the Act on the Police is the ascertainment that use of Police units and sub-units will be insufficient or may not be sufficient to carry out counter-terrorism measures. In that way the legislator actually narrowed the possibility of using the army for action due to this reason. The reason for such conditioning the possibility of using the Polish Armed Forces to support the Police in the field of counter-terrorism activities should be considered disposing by the latter the wide possibilities of using its own forces for anti-terrorism and counter-terrorism activities, in particular prevention units and counter-terrorism sub-units, which can be additionally supported by specialized Border Guard groups or ABW. As M. Gabriel Węglowski points out, the use of military force may be justified primarily in two cases: introduction of an alert level in a very large area of Poland or throughout its territory, or in case of a more unusual threat or terrorist attack, connected in particular with a form of attack (e.g. chemical, biological, using radioactive materials, using aircraft) or its purpose, in particular highly specialized facility (e.g. a power plant, especially nuclear, drilling rig, sea-going vessel)[20].

When discussing the possibilities of cooperation between the Police and the army in ensuring security and public order, it is important to mention the provisions of the Act of 21 June 2002 on the state of emergency[21]. Without going into details about the assumptions and rigors of this state of emergency, it should be mentioned that it is introduced in a situation of particular threat to the constitutional system of the State, the security of citizens or public order, including those caused by terrorist activities or activities in cyberspace, which cannot be removed through the use of ordinary constitutional means. It is appropriate to emphasize that the use of Polish Armed Forces to restore the normal functioning of the State

[18] Z. Gądzik, comment on Art. 18 [in:] *Ustawa o Policji. Komentarz*, Lex (11.06.2020).

[19] Dz.U. 2019, Item 796.

[20] M. Gabriel-Węglowski, comment on Art. 20, Art. 21, Art. 22 [in:] *Działania antyterrorystyczne. Komentarz*, https://sip.lex.pl/#/commentary/587754159/551599.

[21] The Act of 21 June 2002 on the state of emergency (Dz.U. 2017, Item 1928).

is provided for in the aforementioned Act only if the forces and measures used so far would be depleted. Then, the President of the Republic of Poland may, at the request of the Prime Minister, decide to use the units and sub-units of the Armed Forces of the Republic of Poland. The Act does not indicate literally the need for cooperation between the Police and the military after the introduction of the state of emergency, but stipulates that the Armed Forces of the Republic of Poland perform the tasks assigned by the Minister of National Defense, who agrees them with the Minister of the Interior Affairs. On the other hand, in accordance with the executive regulations to the Act[22], governing the detailed rules of use of the military, in its decision the Minister of National Defense determines the scope and procedure of cooperation with the governmental authorities, with which the commanders of the Armed Forces units will cooperate in the course of performing the tasks, explicitly ordering cooperation with the Police Commander in Chief – in case of use of Armed Forces units in the area larger than one province, and with the competent provincial police commander – in case of activities in one province[23].

Similar solution regarding use of the Polish Armed Forces was introduced in the Act of 18 April 2002 on the state of natural disaster[24]. The Art. 17 of that Act states that the State Fire Brigade and other fire protection units, the Police, Border Guard, Maritime Search and Rescue Service, medical entities, including in particular the officials of state medical rescue units, and other competent state offices, agencies, inspections, guards and services, are involved in preventing or removing the effects of a natural disaster. However, if the use of other forces and means is impossible or insufficient, the Minister of National Defense may pass to the disposal of the Governor in whose area of activity is natural disaster, sub-units or units of the Armed Forces of the Republic of Poland, with directing them to carry out tasks related to prevention or removal of the effects of natural disaster.

The analysis of current legal regulations, which are dispersed in many different legal acts shows that the solutions contained in this documents fully enable the Police to cooperate with the Armed Forces of the Republic of Poland and, consequently, use the latter to carry out the tasks of ensuring internal security in the situation where the police actions – as a leading body in the internal security system – is insufficient or may not be sufficient. However, as J. Falecki points out, a serious drawback of participation of the Polish Armed Forces in ensuring the internal security of the State is making decisions about using the military at high levels of power (Minister of National Defense, President of the Council of

[22] Regulation of the Council of Ministers of 20 December 2013 on detailed rules for use of units and sub-units of the Armed Forces of the Republic of Poland during a state of emergency (Dz.U. Item 1733).

[23] P. Hac, *Formalne podstawy*…, p. 100.

[24] Dz.U. 2017, Item 1897.

Ministers, President of the Republic of Poland depending on the type of crisis situation and in terms of use of the Military Police) each time, thereby the time of introduction of sub-units and units of the army into action extends[25].

It should also be pointed out that the primary task of the Polish Armed Forces is to uphold the sovereignty and independence of the Polish People and its security and peace, which should be primarily applied to external security. In the internal security system, the Polish Armed Forces have an auxiliary and supportive role, and they carry out their tasks in this system mainly in crisis situations. With this in mind, it is extremely important to organize interaction with other subjects of the system, such as Police. It should be emphasized that the area of organization the cooperation between the Polish Armed Forces and the Military Police, which is a separate and specialized service forming part of the Armed Forces of the Republic of Poland and the Police, is properly included in the existing legal acts, which are additionally supplemented by concluding cooperation agreements.

As for the administrative agreement, it is a legal, non-binding form of administration activity[26]. The subject matter of the administrative agreement is within the scope of rules on the range of the authorities' activities, which means that it arranges cooperation between certain authorities or transfer administrative competence to another administrative authority or transfer jurisdiction to conduct a case on behalf of someone else[27]. It is bilateral or multilateral act in the field of administrative law, the parties to which are public administration entities are parties, and the essence of this action is consistent statement of will of those entities[28]. It is a form of legal cooperation of independent administrative authorities and institutions, relatively independent (not hierarchically subordinated)[29]. The agreement is often used by the Police as a form of cooperation with other entities.

These agreements aim at strengthening cooperation between executive entities in the internal security system and mainly concern such areas as: organization of threat communication and exchange of information between cooperating entities, the areas and principles for the implementation of common tasks, coop-

[25] J. Falecki, *Możliwości doskonalenia udziału Sił Zbrojnych RP w systemie bezpieczeństwa wewnętrznego* [in:] *Współczesne uwarunkowania zarządzania bezpieczeństwem wewnętrznym państwa*, eds. J. Falecki, R. Kochańczyk, P. Sowizdraniuk, Katowice 2018, p. 40.

[26] B. Dolnicki, R. Cybulska, *Nowe dwustronne formy działania administracji publicznej – zagadnienia wybrane* [in:] *Koncepcja systemu prawa administracyjnego*, ed. J. Zimmermann, Warszawa 2007, p. 456.

[27] J. Gierszewski, *Współpraca policji i straży gminnych w zakresie ujawniania i zwalczania wykroczeń* [in:] *Współdziałanie organów bezpieczeństwa i porządku publicznego w zakresie wykrywania i ścigania ich sprawców*, eds. I. Nowicka, A. Sadło-Nowak, A. Tunia, Lublin 2012, p. 128.

[28] E. Komorowski, *Prawne formy działania administracji* [in:] *Prawo administracyjne. Część ogólna*, ed. M. Chmaj, Warszawa 2007, p. 254.

[29] *Prawo administracyjne*, ed. Z. Niewiadomski, Warszawa 2011, p. 222.

eration in planning use of the forces and measures, conducting joint training projects or use of the training base of the cooperating entities. As an example of such agreement can be concluded on 5 February 2020 by the Police Commander in Chief, Commander of the Territorial Defense Forces[30] and Commander-in--Chief of the State Fire Brigade Agreement on cooperation in the field of crisis management, saving human life and search for missing persons and in the field of training activities.

Conclusion

In conclusion, it should be noted that presented possibilities for cooperation between the Police with the Armed Forces of the Republic of Poland provide considerable flexibility in responding to various threats, starting from collective disturbances of public order, through prevention and response to terrorist attacks, ending with the need to restore normal functioning of the State after introduction of a state of emergency. The legal organization of the cooperation of these services, on the other hand, is widely included in the existing legal acts, which are additionally supplemented by cooperation agreements concluded by the Police Commander-in-Chief and Commanders of the Types of Armed Forces of the Republic of Poland.

Bibliography

Biernat S., *Działanie wspólne w administracji państwowej*, Wrocław–Warszawa–Kraków–Gdańsk 1979.

Czuryk M., *Zakres działania policji oraz obszary jej współdziałania z innymi podmiotami* [in:] *Prawo policyjne*, eds. M. Czuryk, M. Karpiuk, J. Kostrubiec, Warszawa 2014.

Dolnicki B., Cybulska R., *Nowe dwustronne formy działania administracji publicznej – zagadnienia wybrane* [in:] *Koncepcja systemu prawa administracyjnego*, ed. J. Zimmermann, Warszawa 2007.

Falecki J., *Możliwości doskonalenia udziału Sił Zbrojnych RP w systemie bezpieczeństwa wewnętrznego* [in:] *Współczesne uwarunkowania zarządzania bezpieczeństwem wewnętrznym państwa*, eds. J. Falecki, R. Kochańczyk, P. Sowizdraniuk, Katowice 2018.

Gabriel-Węglowski M., comment on Art. 20, Art. 21, Art. 22, https://sip.lex.pl/#/commentary/587754159/551599.

Gądzik Z., comment on Art. 18 [in:] *Ustawa o Policji. Komentarz*, Lex (11.06.2020).

Gierszewski J., *Współpraca policji i straży gminnych w zakresie ujawniania i zwalczania wykroczeń* [in:] *Współdziałanie organów bezpieczeństwa i porządku publicznego w zakresie wykrywania i ścigania ich sprawców*, eds. I. Nowicka, A. Sadło-Nowak, A. Tunia, Lublin 2012.

[30] The Territorial Defence Forces were established by the Act of 16 November 2016 amending the Law on the General Obligation to Defend of the Republic of Poland and some other laws (Dz.U. Item 2138). They are part of the Polish Armed Forces, as the fifth of their kind, alongside: Ground Forces, Air Force, Navy, Special Forces.

Hac P., *Formalne podstawy współdziałania Sił Zbrojnych RP w zakresie zapewnienia bezpieczeństwa i porządku prawnego*, „Kwartalnik Policyjny" 2017, No. 1(40).
Komorowski E., *Prawne formy działania administracji* [in:] *Prawo administracyjne, część ogólna*, red. M. Chmaj, Warszawa 2007.
Olejniczak-Szałowska E., *Prawny obowiązek współdziałania Policji z innymi służbami w sferze ochrony bezpieczeństwa i porządku publicznego* [in:] *Policja. Prawne formy działania*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019.
Prawo administracyjne, ed. Z. Niewiadomski, Warszawa 2011.
Ura E., Pieprzny S., *Rola porozumień administracyjnych w działalności organów bezpieczeństwa i porządku publicznego* [in:] *Podmioty administracji publicznej i prawne formy ich działania. Studia i materiały z Konferencji Naukowej poświęconej Jubileuszowi 80-tych urodzin Profesora Eugeniusza Ochendowskiego*, Toruń 2005.
Zaborowski J., *Prawne środki zapewnienia bezpieczeństwa i porządku publicznego*, Warszawa 1977.

Summary

Ensuring security and public order is one of the most important, constitutional objectives of the State and at the same time the task of many public authorities. The Police is leading, uniformed and armed formation in a system of public safety authorities whose overriding operating objective, determined by the legislator is to serve the society by protecting people's safety and maintaining security and public order. However, in carrying out tasks related to such vast area of activity, the Police does not have to be unassisted. Natural partner for the Police is the army, despite the fact that the main task of the Armed Forces of the Republic of Poland is to protect the State and society from external military threat. This study aims to characterize formal foundations and scope of cooperation between Polish Police and Armed Forces in terms of ensuring security and public order. For this purpose, legal basis for providing support for the Police by the Polish Armed Forces under the laws on: state of emergency, natural disaster, crisis management, the Police, counter-terrorism actions and general obligation to defend the Republic of Poland and issued regulations based on them were examined. This article also refers to the issue of cooperation of the Police with the Armed Forces of the Republic of Poland on the basis of concluded agreements.

Keywords: cooperation, collaboration, Police, Armed Forces of the Republic of Poland

WSPÓŁDZIAŁANIE I WSPÓŁPRACA POLICJI I SIŁ ZBROJNYCH RP W ZAKRESIE ZAPEWNIENIA BEZPIECZEŃSTWA I PORZĄDKU PUBLICZNEGO

Streszczenie

Zapewnienie bezpieczeństwa i porządku publicznego stanowi jeden z najważniejszych konstytucyjnych celów państwa i zarazem zadanie wielu organów władzy publicznej. Policja jest wiodącą umundurowaną i uzbrojoną formacją w systemie organów bezpieczeństwa publicznego, której nadrzędnym celem działania określonym przez ustawodawcę jest służenie społeczeństwu poprzez ochronę bezpieczeństwa ludzi oraz utrzymywanie bezpieczeństwa i porządku publicznego. W wypełnianiu zadań związanych z tak rozległym obszarem aktywności Policja nie musi być

jednak samodzielna. Naturalnym partnerem dla Policji jest wojsko pomimo tego, że głównym zadaniem Sił Zbrojnych Rzeczypospolitej Polskiej jest ochrona państwa i społeczeństwa przed zewnętrznym zagrożeniem militarnym. Niniejsze opracowanie ma na celu scharakteryzowanie formalnych podstaw i zakresu współdziałania Policji i Sił Zbrojnych RP w zakresie zapewnienia bezpieczeństwa i porządku publicznego. W tym celu przeanalizowano podstawy prawne udzielania wsparcia Policji przez Siły Zbrojne RP wynikające z ustaw o: stanie wyjątkowym, klęsce żywiołowej, zarządzaniu kryzysowym, Policji, działaniach antyterrorystycznych i powszechnym obowiązku obrony RP oraz wydane na ich podstawie rozporządzenia wykonawcze. W niniejszym artykule odniesiono się także do zagadnienia współdziałania Policji z Siłami Zbrojnymi RP na podstawie zawieranych porozumień.

Słowa kluczowe: współdziałanie, współpraca, Policja, Siły Zbrojne RP

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LEGAL FRAMEWORK FOR THE POLICE COOPERATION WITH NON-GOVERNMENTAL ORGANIZATIONS IN THE FIELD OF PROMOTING CHILDREN'S RIGHTS

Introduction

The subject of this study is to determine the possibilities for cooperation between the Police and non-governmental organizations[1] in promoting children's rights. An analysis of this cooperation appears to be of necessity, given the fact that in the modern world there is an increasing number of violations and above all lack of respect for children's rights. This phenomenon is accompanied by a low level of social consciousness regarding the existence of children's rights and the need to respect them. This study will therefore not concern the discussion of cases of evident violations of children's rights but will concern the reasons for not respecting them. Respect for these rights means observing them and taking preventive action. Cases of violation of children's rights or lack of respect for them are the result of a lack of social consciousness of the existence of these rights[2].

There are many reasons for the lack of respect for the children's rights, including the ubiquitous virtual space with its numerous dangers, the increasingly weaker state and parental control over the behaviour of individuals mainly in virtual space[3]. They are substituted by undefined centres for content and behaviour moderation on the Internet with the use of the latest socio technical instru-

[1] NGOs operates in the form of associations or foundations. Some of them gain the status of public benefit organisations.

[2] Cf. P. Sitek, *Aspekty prawne struktury rodziny a ambiwalentność koncepcji partnerstwa w stosunkach rodzicielskich z dziećmi*, „Journal of Modern Science" 2014, No. 1(20), pp. 371–381; M. Sitek, *Koncepcja rodziny w świetle postanowień Europejskiego trybunału Praw Dziecka*, „Journal of Modern Science" 2014, No. 1(20), pp. 131–144.

[3] Cf. B. Śliwerski, *O konieczności powrotu do subsydiarnej roli państwa w publicznej edukacji szkolnej dzieci i młodzieży*, „Pedagogika Społeczna" 2015, No. 3, pp. 17–51.

ments. However, the most important issue is the lack of awareness of the very existence of legal rights characteristic of the child, both on the part of the children themselves and of the widely recognised guardians and actors of the real and virtual world. The promotion of children's rights is the subject of numerous local, national and international actions. The opportunity for such an action is celebrated every year UNICEF International Children's Day, which falls on the 1 June. Nevertheless, a single action taken on an annual basis does not bring the expected results in the social consciousness cultivation of the existence of children's rights and the need to respect them. There is therefore a need for an organised promotional campaign, lasting even many years, with the involvement of public administration authorities and non-governmental organizations.

The purpose of this article is to demonstrate the legal basis for possible cooperation of the Police with non-governmental organizations in the area of promotion of children's rights. It is a conventional preventive measure. Undoubtedly, the Police have the necessary means and instruments to put into effect not only the respect of children's rights but also their promotion. However, one must be aware that this is not an excellent measure, and only contributes to reducing the number of cases of violation of children's rights or failure to respect them. Nevertheless, there is a necessity to activate the process of raising social consciousness of the existence and respect for children's rights.

Children's rights in legal regulations in historical terms

It is important to recognize that the empowerment of the child has evolved over the centuries or even millennia. The contemporary criteria for assessing human behaviour cannot, however, be transferred to the past. This can lead to some absurd conclusions, including that it is only nowadays that the child has found proper social or legal protection[4]. Referring to antiquity, the status of the child in ancient cultures was diverse and, certainly, significantly worse than that of the present. In ancient Rome, the status of the child in the family and society evolved, given the country's existence period (754 BC to 565 AD). It can be said that the child's status in ancient Rome was considerably better than in other cultures of that time[5]. It was dependent on whether the child was born by a free woman or a slave.

[4] There are many journalistic texts on the Internet which contain harmful generalisations or even untruth about the fate of children in ancient or medieval times. The reader of these texts acquires a negative image of those times in advance. Cf. W. Knap, *Smutne dzieje dzieciństwa*, „Dziennik Polski", 2 June 2015, https://dziennikpolski24.pl/smutne-dzieje-dziecinstwa/ar/3885043 (5.03.2020).

[5] Cf. V. Rączewska, *Narodziny i wczesna opieka nad dzieckiem w rodzinie rzymskiej*, „Zeszyty Naukowe Szkoły Pedagogicznej w Bydgoszczy, Studia Pedagogiczne" 1922, No. 18, p. 60; J. Jundziłł, *Teoretyczne problemy wychowania w rodzinie rzymskiej (III w. p.n.e. – III w. n.e.)*, Bydgoszcz 1987, p. 54.

In the latter case, the child also became a slave, unless the father of the child was a free man and the woman gave birth after her liberation. In this case also the child was born free (*favor libertatis*)[6]. Furthermore, the child's status depended on whether they came from *iustum matrimonium* or cohabitation. Finally, it was important for the legal situation of the child whether the father was a Roman citizen. Up to 212 AD, the father's nationality determined the child's acquisition of citizenship, and this in turn made it possible for the child to enter public offices[7].

According to a study by Ph. Ariès, it appears that in the Middle Ages, a child was treated in a manner similar to an adult[8]. This concept was firmly criticised by W. Brzeziński, according to whom the image of a child in the Middle Ages was built on Christian doctrine[9]. The message of Christ was fundamental: "Truly I tell you, unless you change and become like little children, you will never enter the kingdom of heaven. Therefore, whoever takes the lowly position of this child is the greatest in the kingdom of heaven" (Matthew 18:1–5). This text was referred to by early medieval thinkers. The same took place in the case of Venerable Bede (672–735) in *In Marci Evangelium expositio* claimed that the child is a role model for the reception of learning. The child should obey the teacher[10]. However, this does not mean that children's fate, social or legal status was favourable. It depended primarily on the family's material situation or the state or city structure of that time. In the historical sources one can find descriptions of dramatic situations of the child in the Middle Ages[11].

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[6] G. 1.88; D. 35.2.32.5 (Maec. L. 9 fideicom.). Cf. O. Tellegen-Couperus, *Father and foundling in classical Roman law*, „The Journal of Legal History" 2013, No. 34(2), pp. 129–138; C. Catello, *In tema fi "favor libertatis"*, SDHI 1956, No. 22, pp. 348–361.

[7] Based on *Constitutio Antoniana* in 212 AD the emperor Caracalla granted Roman citizenship to all inhabitants of the Empire. This devaluation of that citizenship, which had previously been very desirable, has thus taken place. Cf. J. Modrzejewski, *L'Edit de Caracalla de 212: La mesure de l'universalisme romain* [in:] *Roman law and legal knowledge*, ed. T. Giaro, Warszawa 2011, pp. 21–36; A. Łukasiewicz, *Zum P. Giss. 40.I.9 („Constitutio Antoniniana")*, „The Journal of Juristic Papyrology" 1990, No. 20, pp. 93–101; W. Osuchowski, *Constitutio Antoniniana: przyczyny wydania edyktu Karakalli z r. 212 w świetle współczesnych źródeł historyczno-prawnych*, „Roczniki Teologiczne" 1963, No. 10(4), pp. 65–82; *idem*, *Extension de la sphère d'application des prétentions réciproques dans la procédure extraordinaire d'après les constitutions impériales en droit romain*, „Archivum Iuridicum Cracoviense" 1973, No. 6, pp. 83–100.

[8] Cf. Ph. Ariès, *Historia dzieciństwa. Dziecko i rodzina w dawnych czasach*, Gdańsk 1995.

[9] W. Brzeziński, *Obraz dziecka w perspektywie historyczno-porównawczej. Przeszłość we współczesności, współczesność w przeszłości*, „Przegląd Pedagogiczny" 2012, No. 1, p. 143.

[10] *In Marci Evangelium expositio*, Patrologia Latina (further quoted PL) Vol. 92, letters 131–302. Announces for: W. Brzeziński, *Obraz dziecka*…, p. 144.

[11] Some medieval sources contain numerous descriptions of diseases affecting children. A child's disability was considered a punishment for sins. There was also gross neglect in the childcare. The magnates' children were sometimes presented as a lien or a warrant for various interests at the court of another ruler. Cf. A. Teterycz-Puzio, *Dziecko i dzieciństwo w świetle wybranych źródeł narracji (do XIV w.)*, „Studia Gdańskie" 2011, No. 28, pp. 257–276.

The action to define the children's rights was taken at the end of the 19th century[12]. However, it was only in the second half of the 20th century that children's rights as a separate set of human rights and legal rights were distinguished. Previously, certain rights of children were included in general declarations or conventions on human rights. Convention on the Right of Child adopted by the UN General Assembly on 20 November 1989, is therefore important. The term "child" is defined in this document (Art. 1) and the declaration of the States Parties to the Convention on respect for and guarantee of the rights of every child without any discrimination (Art. 2) was adopted. Importantly, the Convention states that the child's interest and welfare should be an overriding interest taken into account in all actions undertaken by public or private institutions (Art. 3). It therefore appears necessary to establish cooperation between the two sectors in order to properly secure the interests of the child[13].

The protection of children,s rights under international law has, in principle, been transposed into the Constitution. Thus, in Art. 72, paragraph 1, sentence 1 of the Constitution of the Republic of Poland, the legislator of Poland stipulated that "the Republic of Poland shall ensure the protection of children's rights". However, the key issue is in sentence 2 which states that "everyone has the right to demand that public authorities protect the child from violence, cruelty, exploitation and demoralisation". This conceptualisation obliges the state authorities to act to protect children's rights by also promoting them and raising public awareness. It should be noted that this conceptuality in the Constitution of the Republic of Poland is quite advanced and rather uncommon in other European constitutions. Perhaps it is so because it dates back before 1989[14].

Promotion of children's rights as the task of the Police

The tasks of the Police are defined in Art. 1, paragraph 2 of the Act of 6 April 1990 on the Police[15] (further on). From the tasks enumerated therein, one cannot directly draw conclusions about the Police's obligation to promote children's rights. Indirectly, however, based on Art. 1, paragraph 2, point 3 one may conclude that there exists such a possibility. The legislator determined that the tasks

[12] Since 1880, international associations of criminologists have been established in Europe and have been working on the alleviation of juvenile justice. In the early 20th century, there lived the great advocate of children's rights, J. Korczak. Cf. E. Czyż, *Prawa dziecka*, Warszawa 2002, p. 9, http://beta.hfhr.pl/wp-content/uploads/2015/10/HFPC_prawa_ dziecka.pdf (6.03.2020).

[13] Cf. P. Jaros, *Definicja dziecka* [in:] S.L. Stadniczeńko, *Konwencja o prawach dziecka. Wybór zagadnień*, Warszawa 2015, pp. 51–62.

[14] Cf. W. Borysiak [in:] *Konstytucja RP*, Vol. I: *Komentarz do art. 1–86*, eds. M. Safjan, L. Bosek, Warszawa 2016, comment on Art. 72, Legalis.

[15] Dz.U. 2019, Item 161.

of the Police include "initiating and organizing actions aimed at preventing committing crimes and offences and criminogenic phenomena and cooperating in this scope with state and local authorities and community organizations". The Police, therefore, are not just a body that only deals with serious actions such as detention, verification of identity papers, criminal detection or pursuit[16]. The legislator, moreover, quite deliberately uses terms that soften the image of the actions of the Police, such as "surveillance" (Art. 1, paragraph 2, point 5, further on), "control" (Art. 1, paragraph 2, point 6, further on), or "cooperation" (Art. 1, paragraph 2, point 7, further on)[17].

Furthermore, the Police are statutorily obliged to respect human rights when carrying out their tasks. In Art. 14, paragraph 3 the legislator stipulated that Police officers are obliged to "respect human dignity and to observe and protect human rights" when realizing their duties. This law is a directive, and therefore an absolutely binding standard for the action of the Police. Further elaboration of the body of this law should be sought in the case-law. In the judgement of the Regional Court in Białystok from 26 August 2016 (II Ca 592/16) the court stated that in the case of verifying someone's identity papers by the Police, the purpose of such an action must be defined and the action itself must be carried out in a way that least infringes the personal interests of the legitimacy holder. Such a person must be informed of the purpose of the verification of their identity papers. The police must similarly act in the event of a search. This can be done moderately and without unnecessary interference with the intimacy of the detainee[18].

An analysis of the legal regulations does not provide an unequivocal statement that the legislator ordered the Police to get involved in promoting children's rights. The Police are to protect children's rights, especially if they are violated[19]. Nevertheless, as has already been mentioned, the children's rights are an integral part of human rights, and their separation was made due to the particular need to protect this social group[20]. The concept of protecting certain rights

[16] B. Opaliński [in:] B. Opaliński, M. Rogalski, P. Szustakiewicz, *Ustawa o Policji. Komentarz*, Warszawa 2015, comment to Art. 1, Legalis.

[17] Cf. J. Dobkowski, *Ewolucja pojęcia „formacja" w polskim prawie administracyjnym* [in:] *100-Lecia Policji. Organizacja i funkcjonowanie*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019, pp. 40–52.

[18] The judgement of WSA in Lublin of 11 February 2016, III SA/Lu 1108/15.

[19] Cf. E. Pływaczewski, G.B. Szczygieł, *Kryminologiczne i prawno-karne aspekty przemocy w rodzinie* [in:] *Rodzina i społeczeństwo wczoraj i dziś*, eds. F. Lempa, S. Tafaro, Białystok 2006, pp. 185–194.

[20] Children's rights are not the only group of human rights which are separately regulated. Therefore it is the Convention of Persons with Disabilities adopted by the General Assembly NZ, 13 December 2006. This convention was ratificated by Poland on 6 September 2012. Currently ONZ prepares Convention on the Rights of Older People. More about the history of the separation of children's rights cf. A. Krawczyk-Chmielecka, *O rozwoju praw dziecka w Polsce i na świecie*, „Dziecko Krzywdzone. Teoria, Badania, Praktyka" 2017, No. 16(2), pp. 11–23.

also includes preventive actions, that is precautionary actions. The Law on the Police repeatedly refers to the duty of the Police in the area of crime prevention (Art. 14, paragraph 1, point 1, further on).

In this regard, the promotion of children's rights and raising social awareness among children and adults alike should be included among preventive measures. Although such an obligation is not *expressis verbis* incumbent on the police, it is important to recognise that the police are part of a combined public administration. It therefore performs its tasks within the framework of the basic division of the country. This fact implies the need for the police to cooperate with self-government units or non-governmental organisations. Hence, apart from typical governmental actions, the police may also undertake socio-organizational activities, such as lectures, organising or co-organising events for the purpose of educating or encouraging participants to adopt a particular behaviour, posting posters, initiating appeals or social campaigns calling on citizens or local communities to undertake certain actions[21].

The police are also involved in precautionary actions on the basis of the Act of 26 October 1982 on proceedings in juvenile matters[22]. This obligation comes from Art. 4, § 4, pursuant to which the Police, upon receipt of notification of the threat of demoralisation of a minor, are obliged to take appropriate action. To take such an action, it suffices alone to consider the existence of demoralising circumstances. The counteraction may consist in not enabling or interrupting "behaviours that indicate the demoralisation of the minor"[23]. Such operations may also include actions to raise awareness of the minor's environment of their rights.

Police cooperation with non-profit organizations in the field of promoting children's rights

Protection of children's rights, as well as their promotion, requires professional operation on the part of public structures, including the Police and public benefit organizations. Professional operation assumes having specialists who have the appropriate knowledge and are guided by high principles of professional ethics[24]. Professionalism is required in particular in working with children. In the case of promoting children's rights, it is necessary to have knowledge not only in the field of child psychology or pedagogy, but also in the principles of shaping

[21] Cf. *Prawo administracyjne*, ed. Z. Cieślak, Warszawa 2012, p. 311.

[22] Dz.U. 2018, Item 969.

[23] A. Haak-Trzaskowska, H. *Haak, Ustawa o postępowaniu w sprawach nieletnich. Komentarz*, Warszawa 2015, comment on Art. 4, Legalis.

[24] Cf. K. Stasiuk-Krajewska, *Społeczne funkcje public relations a etyka zawodowa*, „Studia Ekonomiczne" 2014, No. 185, pp. 71–83.

social awareness in the spirit of children's rights, with the use of traditional media and electronic devices (social networking messengers).

The policemen themselves are not professionally prepared to work with children and to conduct campaigns promoting children's rights. Nevertheless, the Police have professional counselors in their structures, who are undoubtedly psychologists. They have been active in the structures of this formation for almost 25 years[25]. They perform their tasks at the Police Headquarters and Provincial Headquarters. The legal basis for employing psychologists in the Police is Art. 7, point 1 of the Act and on this basis issued the order No. 53 of 6 October 2014 of the Police Commander in Chief on the methods and forms of performing certain official tasks by psychologists on duty or employed in organizational units of the police[26]. Their main task is to select appropriate staff for the Police and psychological assistance to officers. Pursuant to § 5 of the Ordinance No. 53, they may provide psychological advice or group support. They take part in police activities concerning children (§ 8, point 6 of the Ordinance).

The most important, however, from the point of view of the purpose of this study, is the possibility of conducting psychoeducation by police psychologists in the form of lectures conferences, seminars, workshops, publication of articles or guides, brochures or leaflets (§ 13 of the Ordinance). These forms of activity are undoubtedly used by psychologists towards the policemen themselves, but can also be implemented in external activities, including the promotion of children's rights. Police psychologists may be supported in these activities by professional lawyers. This support may come from the cooperation of the Police with law departments, as well as with chambers of legal advisers or the district bar council.

Numerous non-governmental organizations are involved in work to help children and protecting their rights. Many of them are local in nature. But there are also national organizations that have already recognized reputation and great merits in this field. Undoubtedly, such non-governmental organizations that deal with professional child protection include: the Helsinki Foundation for Human Rights, the Committee for the Protection of Children's Rights, Nobody's Children Foundation and the "Blue Line" – National Ambulance Service for Victims of Domestic Violence. These are organizations that have professionals who work with children.

The scope of activities of non-governmental organizations was quite broadly defined in the Act on the Law of Associations[27] of 7 April 1989 and the Act of

[25] Cf. M. Kożuszek, *Rola psychologii w działalności służb mundurowych*, „Zeszyty Naukowe Ruchu Studenckiego" 2015, No. 2, pp. 91–100; A. Wieczorek, *Psychologowie policyjni*, http://www.policja.pl/pol/aktualnosci/68323,Psychologowie-policyjni.html (7.03.2020).

[26] Dz.Urz. KGP 2015, Item 118.

[27] Dz.U. 2019, Item 713.

6 April 1984 on Foundations[28]. However, Art. 4 of the Acts of 24 April 2003 on Public Benefit and Volunteer Work (hereinafter: Act on Public Benefit and Volunteer Work)[29]. In a long directory public tasks that may be performed by these organizations, it is necessary to indicate activities aimed at increasing the legal awareness of the society (Art. 4, paragraph 1, point 1b of the Act), taking actions for the benefit of children and youth (Art. 4(1) 15 of the Act on Public Benefit and Volunteer Work) and the promotion and protection of human freedoms and rights as well as civil liberties (Art. 4, paragraph 1, point 22 of the Act).

Initiatives aimed at promoting the rights of the child also fit perfectly into the scope of the tasks of public benefit organizations. Such activities may be undertaken spontaneously or occasionally, but also on the basis of agreements concluded with the Police on the joint implementation of a specific project, including the promotion of children's rights[30]. This seems to be the key to the transition from being active to the symmetrical promotion of children's rights by the Police and NGOs[31]. On the Internet you can find numerous examples of police officers' participation in the celebration of the Children's Rights Day[32].

Deals or agreements of the Police with these organizations will allow for the implementation of joint tasks in the field of promoting children's rights in such forms as: meetings with children in schools, meetings with adults in churches, organizing training and conferences for teachers, promoting children's right in a billboard campaign or in traditional media, including television[33]. Nowadays, it is most important to promote children's rights on the Internet, especially on social media, which is an element of creating cyberculture. This is a huge challenge for the Police and intergovernmental organizations. Here, it is necessary not only to know about children's rights, but also to know how to promote specific content on social networks and knowledge about new ways of violating human rights. Such a promotional campaign entails significant financial resources, and these will be difficult to obtain for the Police from public funds. However, it will be much easier to obtain them by non-governmental organizations from their own resources, from sponsors or from public collections.

[28] Dz.U. 2018, Item 1491.

[29] Dz.U. 2019, Item 688.

[30] J. Kotowski, R. Barański, *Fundacje i stowarzyszenia. Współpraca organizacji pozarządowych z administracją publiczną*, Warszawa 2016.

[31] W praktyce, ale i w doktrynie oraz w ustawodawstwie jest oczywista współpraca czy współdziałanie Policji z samorządami terytorialnymi. Cf. J. Dobkowski, *Policja i samorząd terytorialny w Polsce. Charakterystyka prawna relacji wzajemnych*, Olsztyn 2015, p. 123 n.

[32] *The Police take part in the celebration of the children right's days*, http://www.policja.pl/pol/aktualnosci/135149,Policjanci-biora-udzial-w-obchodach-Dnia-Praw-Dziecka.html (8.03.2020).

[33] Cf. K. Martyniak, *Kooperacja Policji oraz NGO w zakresie zapewnienia bezpieczeństwa*, „Polonia Journal" 2018, No. 8, pp. 25–36.

Conclusion

The separation of children's rights from the particular bundle of subjective rights typical of children from human rights took place only in the 20th century, although the origins of some of them date back to antiquity. Public awareness of these rights is still low, hence frequent violations of these rights and, consequently, disrespect towards them. In terms of determining the level of this awareness, not even sociological research is conducted.

Meanwhile, protecting children requires knowing their rights and changing social attitudes. The solution to this situation is to conduct a wide-ranging campaign promoting children's rights, in order to raise public awareness of their existence and the need to respect them, especially on social networks.

Indirectly, from the Act on the Police, it can be concluded that such activities also belong to the tasks of the Police. As part of crime prevention activities, the Police conducts training together with non-governmental organizations in this field. Both sectors of public activity have professional specialists in this field. There are psychologists working in the Police who are outstanding experts in this problem. NGOs also have professional staff. However, there is no will for a wider cooperation of the Police with these organizations in order to prevent violations of children's rights. Promoting the rights of the child requires only coordinating actions by defining a common goal and means of action.

Bibliography

Ariès Ph., *Historia dzieciństwa. Dziecko i rodzina w dawnych czasach*, Gdańsk 1995.

Borysiak W. [in:] *Konstytucja RP*, Vol. I: *Komentarz do art. 1–86*, eds. M. Safjan, L. Bosek, Warszawa 2016.

Brzeziński W., *Obraz dziecka w perspektywie historyczno-porównawczej. Przeszłość we współczesności, współczesność w przeszłości*, „Przegląd Pedagogiczny" 2012, No. 1.

Catello C., *In tema fi "favor libertatis"*, SDHI 1956, No. 22.

Czyż E., *Prawa dziecka*, Warszawa 2002, http://beta.hfhr.pl/wp-content/uploads/2015/10/HFPC_ prawa_ dziecka.pdf (6.03.2020).

Dobkowski J., *Ewolucja pojęcia „formacja" w polskim prawie administracyjnym* [in:] *100-Lecia Policji. Organizacja i funkcjonowanie*, eds. E. Ura, M. Pomykała, S. Pieprzny, Rzeszów 2019.

Dobkowski J., *Policja i samorząd terytorialny w Polsce. Charakterystyka prawna relacji wzajemnych*, Olsztyn 2015.

Haak-Trzaskowska A., Haak H., *Ustawa o postępowaniu w sprawach nieletnich. Komentarz*, Warszawa 2015.

Jaros P., *Definicja dziecka* [in:] S.L. Stadniczeńko, *Konwencja o prawach dziecka. Wybór zagadnień*, Warszawa 2015.

Jundziłł J., *Teoretyczne problemy wychowania w rodzinie rzymskiej (III w. p.n.e. – III w. n.e.)*, Bydgoszcz 1987.

Knap W., *Smutne dzieje dzieciństwa*, „Dziennik Polski", 2 June 2015, https://dziennikpolski24.pl /smutne-dzieje-dziecinstwa/ar/3885043 (5.03.2020).

Kotowski J., Barański R., *Fundacje i stowarzyszenia. Współpraca organizacji pozarządowych z administracją publiczną*, Warszawa 2016.
Kożuszek M., *Rola psychologii w działalności służb mundurowych*, „Zeszyty Naukowe Ruchu Studenckiego" 2015, No. 2.
Krawczyk-Chmielecka A., *O rozwoju praw dziecka w Polsce i na świecie*, „Dziecko Krzywdzone. Teoria, Badania, Praktyka" 2017, No. 16(2).
Łukasiewicz A., *Zum P. Giss. 40.I.9 („Constitutio Antoniniana")*, „The Journal of Juristic Papyrology" 1990, No. 20.
Martyniak K., *Kooperacja Policji oraz NGO w zakresie zapewnienia bezpieczeństwa*, „Polonia Journal" 2018, No. 8.
Modrzejewski J., *L'Edit de Caracalla de 212: La mesure de l'universalisme romain*[in:] *Roman law and legal knowledge*, ed. T. Giaro, Warszawa 2011.
Opaliński B. [in:] B. Opaliński, M. Rogalski, P. Szustakiewicz, *Ustawa o Policji. Komentarz*, Warszawa 2015.
Osuchowski W., *Constitutio Antoniniana: Przyczyny wydania edyktu Karakalli z r. 212 w świetle współczesnych źródeł historyczno-prawnych*, „Roczniki Teologiczne" 1963, No. 10(4).
Osuchowski W., *Extension de la sphere d'application des prétentions réciproques dans la procédure extraordinaire d'apres les constitutions impériales en droit romain*, „Archivum Iuridicum Cracoviense" 1973, No. 6.
Pływaczewski E., Szczygieł G.B., *Kryminologiczne i prawno-karne aspekty przemocy w rodzinie* [in:] *Rodzina i społeczeństwo wczoraj i dziś*, eds. F. Lempa, S. Tafaro, Białystok 2006.
Policjanci biorą udział w obchodach dnia praw dziecka, http://www.policja.pl/pol/aktualnosci/135149,Policjanci-biora-udzial-w-obchodach-Dnia-Praw-Dziecka.html (8.03.2020).
Prawo administracyjne, ed. Z. Cieślak, Warszawa 2012.
Rączewska V., *Narodziny i wczesna opieka nad dzieckiem w rodzinie rzymskiej*, „Zeszyty Naukowe Szkoły Pedagogicznej w Bydgoszczy, Studia Pedagogiczne" 1922, No. 18.
Sitek M., *Koncepcja rodziny w świetle postanowień Europejskiego trybunału Praw Dziecka*, „Journal of Modern Science" 2014, No. 1(20).
Sitek P., *Aspekty prawne struktury rodziny a ambiwalentność koncepcji partnerstwa w stosunkach rodzicielskich z dziećmi*, „Journal of Modern Science" 2014, No. 1(20).
Stasiuk-Krajewska K., *Społeczne funkcje public relations a etyka zawodowa*, „Studia Ekonomiczne" 2014, No. 185.
Śliwerski B., *O konieczności powrotu do subsydiarnej roli państwa w publicznej edukacji szkolnej dzieci i młodzieży*, „Pedagogika Społeczna" 2015, No. 3.
Tellegen-Couperus O., *Father and foundling in classical Roman law*, „The Journal of Legal History" 2013, No. 34(2).
Teterycz-Puzio A., *Dziecko i dzieciństwo w świetle wybranych źródeł narracji (do XIV w.)*, „Studia Gdańskie" 2011, No. 28.
Wieczorek A., *Psychologowie policyjni*, http://www.policja.pl/pol/aktualnosci/68323,Psychologowie-policyjni.html (7.03.2020).

Summary

The subject of this study is an attempt to determine the possibilities of cooperation between the Police and non-governmental organizations in the area of promoting children's rights. Such measures are necessary to increase the level of effectiveness of the protection of children's rights. The aim of the study is to demonstrate the legal basis for the Police cooperation with non-governmental organizations in the area of promoting children's rights and to show how to conduct

this action. The basic research hypothesis is the assumption that there is currently little public awareness of this area of rights. Making society aware may lead to the increase of effectiveness of protecting children's rights. The final conclusion of the study states that, as for now, the Police cooperation with non-governmental organizations is relatively weak.

Keywords: children's rights, Police, NGOs, crime prevention, cyberculture

PRAWNE RAMY WSPÓŁPRACY POLICJI Z ORGANIZACJAMI POZARZĄDOWYMI W ZAKRESIE PROMOWANIA PRAW DZIECKA

Streszczenie

Przedmiotem opracowania jest próba określenia możliwości współpracy pomiędzy Policją a organizacjami pozarządowymi w obszarze promowania praw dziecka. Działania takie są konieczne w celu zwiększenia poziomu skuteczności ochrony praw dziecka. Celem opracowania jest wykazanie podstaw prawnych współpracy Policji z organizacjami pozarządowymi w obszarze promowania praw dziecka oraz sposobów prowadzenia tej akcji. Podstawową hipotezą badawczą jest założenie, że obecnie istnieje niewielka świadomość społeczna funkcjonowania tej wiązki praw. Ich uświadomienie może zwiększyć skuteczność ochrony praw dziecka. Wniosek końcowy opracowania zawiera twierdzenie, że na razie współpraca Policji z organizacjami pozarządowymi jest stosunkowo słabo aktywna.

Słowa kluczowe: prawa dziecka, Policja, organizacje pozarządowe, zapobieganie przestępczości, cyberkultura

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FROM "WAIVER OF INDICTMENT" TO "WITHDRAWAL OF INDICTMENT". REMARKS ON ARTICLE 14 § 2 OF THE CRIMINAL CODE

The last reform of criminal proceedings "saved" Art. 14, § 2 of the Criminal Code[1], that had been amended on the 1 July 2015[2], and it implemented an institution responsible for "withdrawal of indictment" to the criminal trial, thus replacing the so called "waiver of indictment" being present therein at that time. Even though verbs used in the name of these institutions, such as "to waive" and "to withdraw" in the Polish language mean similar actions[3], coming down to "cancellation" or "resignation from something", however, the *modus operandi* of these institutions is based on a different algorithm. Such a discrepancy also reflects a normative sense of replacing one of these institutions with another, even though it is obvious that in both of these institutions it is all about the public[4] prosecutor's resignation from further accusation support. If the indictment stands for the public prosecutor's aim to pass judgement on and convict the accused person, at the time the former "waiver of indictment" and current "withdrawal of indictment" attest to a kind of *désintéressement* on his part to complete the process, on terms and within limits, which the same public prosecutor previously identified in the prosecution complaint he had signed.

In a sense, Art, 14, § 2 of the Criminal Code could be undoubtedly defined as the so-called "orphan", after the major amendment of the criminal process was

[1] The Act of 6 June 1997 of the Criminal Code Procedure (Dz.U. 2018, Item 1987).

[2] Art. 1, point 3 of the Act of 27 September 2013, on the amendment Act – Criminal Code Procedure and some other Acts (Dz.U. Item 1247 as amended).

[3] Dictionary of the Polish Language, https://sjp.pwn.pl/sjp/cofnac;2449585.html and https://sjp.pwn.pl/szukaj/odst%C4%85pi%C4%87.html (23.07.2018).

[4] Art. 14, § 2 of the Criminal Code discusses this prosecutor, while § 1 of this regulation about "authorized prosecutor". The scope of application § 2 is narrower than § 1, even though auxiliary and private prosecutor still retained the right to "waiver of indictment" (Art. 57, § 1 and Art. 496, § 1 of the Criminal Code).

implemented by the Act of 27 September 2013. The aforementioned amendment assumed a significant contradictory nature of the jurisdictional phase of the criminal process, to which, in a summary, the independence of the parties to the proceedings and a serious limitation of the possibility of initiating evidentiary activities by the ex-officio court were supposed to lead. One of the ways of increasing the parties' activity was granting the public prosecutor (and the auxiliary prosecutor) the right to free disposal of the prosecution complaint, which was to make him an entity fully responsible for the fate of the accusation. Such a full responsibility for an indictment expresses non-duplication in the amended Art. 14, § 2 of the Criminal Code *passusu* on the so-called "non-binding of the court" with a statement of the public prosecutor, which previously used to be a weakness of the institution's waiver of indictment. *Clou* of the change, which was made on the basis of Art. 14, § 2 of the Criminal Code comes down to a significant reduction of the court's role, which has become the recipient of the parties' statements: the public prosecutor and defendant, and also the statement of the injured party (Art. 54, § 2 sentence two of the Criminal Code) and depriving the aforementioned procedural authority of any control instruments in relation to the decisions of the public prosecutor. In the opinion of K. Dudka, such actions caused "a significant increase of the parties' disposition, perceived as the right to alteration by its own actions to the work and outcome of the trial"[5]. Such an increase applies not only to the public prosecutor, but also to the accused and injured party, who in spite of the expiry date pursuant to Art. 54, § 1 of the Criminal Code, gains a new chance to proceed with the case.

Article 14, § 2 sentence three of the Criminal Code prohibits "re-indictment against the same person for the same act". If re-indictment of such an act is "unacceptable", then the resulting situation can be considered in terms of *sui generis* irrevocability of the declaration of the indictment's withdrawal. However, the aforementioned irrevocability will only be characterized by a revocation that previously became effective against its occurrence – next to the public prosecutor's declaration of resignation from supporting the indictment. Further prerequisites in the form of failure to state by the injured party's auxiliary prosecutor to not to declare the will to join the proceedings in this capacity (Art. 54, § 2 sentence two of the Criminal Code) and additionally the consent of the accused party, when the withdrawal of indictment took place after the expiry date indicated in Art. 14, § 2 sentence two of the Criminal Code. Such a solution is consistent with the generally accepted belief that cancellation of an activity "is excluded when the effects are associated with its activity"[6].

[5] K. Dudka, *Rola prokuratora w znowelizowanym postępowaniu karnym*, „Prokuratura i Prawo" 2015, No. 1–2, pp. 63–63.

[6] I. Nowikowski, *Odwoływalność czynności procesowych stron w polskim procesie karnym*, Lublin 2001, p. 19. Similarly: K. Marszał, *Proces karny*, Katowice 1997, p. 234.

According to the prohibition, included in Art. 14, § 2 sentence three of the Criminal Code to these public prosecutors who effectively withdrew from a criminal trial, it could therefore be said about irrevocability of the declaration of the indictment's withdrawal *in genere*? In the absence of an explicit code provision, in the doctrine, there are two positions on the revocability of procedural actions by both parties. According to the first of them, whose advocate is S. Waltoś, in a criminal trial there is a regulation that deprives the parties – with the exceptions clearly specified in the Act – the right to revoke their procedural statements, what is dictated by the need to ensure "a sense of security for [other] participants of the proceedings"[7]. The opponents of such a view, and there is a vast majority of them, recognize that it is the lack of express statutory prohibition that opens up the possibility for the parties to revoke the declaration. The mere performance of the action being currently cancelled was a manifestation of their right[8]. The same authors treat the legislator's indication of cases, expressly allowing the revocation of a procedural Act by a party, not as exceptions to the unwritten rule prohibiting *in genere* cancellation of a procedural Act, but as a specification of the conditions and effects, various for the activities, referred to, among others, in Art. 12, § 3, Art. 14, § 2, Art. 431, § 1 or Art. 506, § 5 of the Criminal Code and hence requiring separate treatment. One may express the view that, on the basis of a short recapitulation of the doctrine views as to the revocability of the parties' procedural Acts, no statutory provision prevents the public prosecutor from revoking the declaration of withdrawal of the indictment, as long as the aforementioned revocation has not become effective. The measure of such an effectiveness will be the discontinuance of criminal proceedings, which occurs in accordance with the relevant court decision and not as a result of the withdrawal itself, which is an important, but not the only prerequisite for such a termination of the proceedings in the case. By way of example, two of his statements can be submitted to the court in succession, the second of which – before the court took steps to inform the injured party about the possibility of proceeding with the case pursuant to Art. 54, § 2, sentence two of the Criminal Code – notifies the court about the change of the previous position and will to further support of the accusation. Admittedly, such lability will not be an exemplar of the prosecutor's acquaintance with this case and his preparation to become a prosecutor in the same case. However, the court will have to take into account the change of its position and proceed further.

The doctrine notes that the moment at which the public prosecutor may revoke his earlier statement on the indictment's withdrawal will be either a decision to discontinue or petition for order about the discontinuance of the proceed-

[7] S. Waltoś, P. Hofmański, *Proces karny. Zarys systemu*, Warszawa 2016, p. 60.

[8] For example: K. Marszał, *Proces karny*, p. 234; K. Dudka, H. Paluszkiewicz, *Postępowanie karne*, Warszawa 2017, p. 217.

ings by the court[9], or in the event that the order becomes final[10]. It is also noted that the cancellation of the indictment's revocation does not contradict the prohibition pursuant to Art. 14, § 2 sentence three of the Criminal Code which takes place in the case where there was no "re-indictment", and the court still proceeds on the basis of the same complaint[11]. I myself am in favor of considering the date of the decision to discontinue the proceedings as the cut-off date, however, what about the actions performed by the injured party and the accused party, referring to withdrawal and the revocation of withdrawal of the indictment by public prosecutor? In the case of the injured party, who made a statement about proceeding with the case of the auxiliary prosecutor, much will depend on whether the deadline pursuant to Art. 54, § 1 of the Criminal Code has already expired. If the aforementioned deadline has not yet expired, such a statement will have an impact on the injured party, who as a consequence will be able to proceed as an outside prosecutor, and not as an auxiliary one, what was his primary intention. On the other hand, if the deadline pursuant to Art. 54, § 1 of the Criminal Code has already expired, then the statement itself and further actions performed by the injured party should be treated as the ones without legal consequences, were undertaken by a person who had not effectively acquired the status of a party to the proceedings. Regardless of which of those situations are to be faced, the court will be obliged to instruct the injured party pursuant to Art. 16, § 2 of the Criminal Code for in both of these cases, he will hold a position of a "participant in the proceedings". The consent of the accused party, defined as the unsubstantiated one, will not be relevant in the aforementioned case. If, however, which cannot be excluded while considering the broadly defined time frame for the revocation of the indictment ("in the course of the trial before the court of the first instance"), the public prosecutor again would like to waiver the indictment, then the court should again repeat its actions in the proceeding pursuant to Art. 14, § 2, sentence two and pursuant to Art. 54, § 2, sentence two of the Criminal Code. Previous consent of the accused party, defined as "consumed" for the purpose of the first withdrawal of the indictment, will not be used a second time. It should be noted here that the consent of the accused party is not a condition for revoking the withdrawal of the indictment, even though the withdrawal itself is an Act "in favor" of the accused party. In such circumstances, the aforementioned Act does not provide a similar solution to the one pursuant to Art. 430, § 3 of the Criminal Code, where the appeal brought in favor of the defendant cannot be withdrawn without the consent of the accused party.

[9] E. Kruk, *Skarga oskarżycielska jako przejaw realizacji prawa do oskarżania uprawnionego oskarżyciela w polskim procesie karnym*, Lublin 2016, p. 262.

[10] K. Dąbkiewicz, comment on Art. 14 of the Criminal Code, LEX 2015, t. 6, https://sip.lex.pl/#/commentary/587682716/480156 (30.10.2019).

[11] E. Kruk, *Skarga oskarżycielska*…, p. 262.

The accused party in the right to consent pursuant to Art. 14, § 2, sentence two of the Criminal Code is not limited by any circumstances and the fact that it is a person subject to obligatory defense. However, if there is a circumstance pursuant to Art. 79, § 1, point 3 or 4 of the Criminal Code and while obtaining such a consent should be preceded by particularly cautious instruction about its effects. Consent may be expressed only by the accused party, who cannot delegate entitlement in this respect to a defense counsel. In a sense, it is therefore a "personal" right and not the only exception to the rule that the defense lawyer has procedural rights analogous to the rights of his client. Such a consent determines the effectiveness of the withdrawal of an indictment only when it is withdrawn "in the course of a trial before the court of the first instance" and when the aforementioned court does not require when the withdrawal took place before the initiation of the court proceedings. Consent must be explicit, for the Act does not provide in this situation the so-called "no objection". It cannot also be expressed on a condition or have a deadline. The fact that it is required for an Act that is actually a statement made for the benefit, is the will to ensure the accused party, whose case has entered the stage of open examination, the possibility of full exoneration, which in the common opinion is a judgement of acquittal (*vide*: Art. 414, § 1 sentence two of the Criminal Code). At the time when the statement on the withdrawal of the indictment was submitted "in the court proceedings", it is the court that asks the accused party to express their position in this matter, as it is the court that conducts the proceedings. The court is unable to delegate this obligation to the prosecutor. The accused's statement is of procedural nature and cannot be made outside the trial. The Act does not provide for a priori addressing the accused party with an inquiry, whether he would be willing to consent to a revocation, even if the public prosecutor anticipates such an eventuality. If the public prosecutor partially revoked the indictment, the consent should adequately cover that part of the accusation that the prosecutor will no longer support. Although there is no relevant regulation in this regard, if the prosecutor withdraws the indictment before the trial, the court should notify the accused party of this action, for this situation is relevant to his defense and constitutes a kind of "a complement" of the notification made under Art. 334, § 3 of the Criminal Code. However, unlike the notification that the indictment was sent to the court, notifications about the withdrawal of the indictment should be made not by the public prosecutor, but by the body currently responsible for the stage of the process in which the withdrawal took place.

Article 14, § 2 of the Criminal Code distinguishes two moments of the withdrawal of the indictment, that is "until the commencement of the trial at the first main hearing" (Art. 14, § 2, sentence one of the Criminal Code) and "in the course of a trial before the court of the first instance" (Art. 14, § 2, sentence two of the Criminal Code), which may raise doubts as to whether such withdrawal is still possible after the closure of the trial pursuant to Art. 405 of the Criminal Code?

It seems that such a possibility should be allowed even in the final votes phase, otherwise it would be necessary to reopen the trial pursuant to Art. 409 of the Criminal Code only for the purposes of the relevant declaration by the public prosecutor, what may be done successfully in the closing speech. However, it is a different matter whether it is placed under the disposition – Art. 14, § 2, sentence two of the Criminal Code of withdrawal of the indictment made "in the course of a court hearing". Will the withdrawal of the indictment made after the end of this procedure also be the subject to the consent of the accused party? Bearing in mind that from the perspective of the accused party, the norm contained in Art. 14, § 2, sentence two of the Criminal Code primarily serves as a warranty, enabling full exoneration of charges instead of discontinuing criminal proceedings, it should be assumed that these reasons do not lose any of its relevance even after performing the actions pursuant to Art. 405 of the Criminal Code. Similar view in the doctrine is also expressed by M. Kurowski, who claims that the opposite interpretation, although in line with the literal wording of Art. 14, § 2, sentence two of the Criminal Code, "would lead to absurdity"[12].

The solution contained in Art. 14, § 2, in relation to Art. 54, § 2, sentence two of the Criminal Code, according to which the effectiveness of one activity and (withdrawal of the indictment) depends on giving (consent of the accused party) or not making other (statement about proceeding with the case as an auxiliary prosecutor), is not all that new. The legislator also contains it in Art. 60, § 4 of the Criminal Code, and the period between these events is a period of a specifically understood suspension of the procedural activity and an informal postponement of the decision by the court to discontinue criminal proceedings. The withdrawal of the indictment itself does not result in the discontinuation of criminal proceedings under the law, for it may only take place in accordance with the court decision, after the fulfillment – depending on the circumstances of the case – its two conditions. The first of them is defined as a positive one and concerns withdrawal of the indictment (Art. 14, § 2, sentence one of the Criminal Code). On the contrary, the second one is considered as a negative condition and concerns a failure to submit a statement by the non-injured party in order to proceed with the case as an auxiliary prosecutor, or three premises, including two positive ones, referring to withdrawal of the indictment and consent of the accused party, and negative one, related to the failure to submit the aforementioned statement by the injured party (Art. 14, § 2, sentence two, in relation to Art. 54, § 2, sentence two of the Criminal Code). The relationship between the discontinuation of the procedure and the activities undertaken or not undertaken by the participants becomes complicated when in a given case there is already an auxiliary prosecutor, for he does not lose its powers, to be more precise he ("does not lose any entitlement") due to the withdrawal of the indictment by the

[12] M. Kurowski, comment on Art. 14 of the Criminal Code, Lex 2018, t. 18, https://sip.lex.pl/#/commentary/587388334/565445 (27.07.2018).

public prosecutor (Art. 54, § 2, sentence one of the Criminal Code). This means that the proceedings are not discontinued as a consequence of the withdrawal of the indictment, and eventually any subsequent discontinuation of these criminal proceedings would be a result of not earlier "withdrawal", but "waiver of the indictment" by an auxiliary prosecutor, who stayed with this case after public prosecutor's "withdrawal" (Art. 57, § 1 of the Criminal Code). At present, "waiver of indictment[13]" is an activity reserved in principle for prosecutors other than the public ones (Art. 57, § 1 of the Criminal Code – an auxiliary prosecutor; Art. 496, § 1 and Art. 497, § 2 of the Criminal Code – private prosecutor). The only exception is when a private prosecutor is charged by a private procurator, who took a private criminal act to prosecution and „waives the indictment", not "withdraws the indictment". Undoubtedly in the solution provided in Art. 60, § 3 and 4 of the Criminal Code, there is a certain inconsistency; if one of the ways to commence private prosecution proceedings by a procurator is to bring the accusation, then maybe a better solution would be granting him the right to withdraw his own prosecution, especially that the following actions with the participation of the injured party do not differ from those undertaken after the revocation of the indictment (*vide* – Art. 60, § 3 and 4 of the Criminal Code). The injured party who has not filed an indictment may, within the deadline of 14 days from the date of being notified by the prosecutor's withdrawal from the accusation, file an indictment or a statement that upholds the accusation as a private one. However, if he does not submit such a declaration, the court or legal clerk discontinues the proceedings.

In order to avoid actions dictated by procedural tactics and in order to protect the accused party from another trial, regulation of Art. 14, § 2 sentence three of the Criminal Code – in the event of withdrawal of the indictment – prohibits such a complaint from being brought again for the same Act and against the same accused party[14]. Guided by the nature of the Act prosecuted ex-officio and guided by the fact that a relevant standard is included in Art. 14, § 2 of the Criminal Code, this prohibition is directed to the public prosecutor, what does not deprive him of the possibility of re-entering the proceedings, if an auxiliary prosecutor waived the indictment. This is the only way to interpret the content of Art. 57, § 2, which requires the prosecutor to be notified about this fact (sentence one) in order to enable him to proceed with a case (sentence two). Provision of Art. 57, § 2 sentence two concerns the proceedings of the case, expressed in the present tense, in which the public prosecutor "does not take part in", and not about such proceedings in which the same public prosecutor "did not take part in"

[13] In the event of a withdrawal of indictment by a public prosecutor, making an evident declaration of will is required. However, in the case of private prosecutor, the Act sometimes allows implied withdrawal in the event of unjustified failure to appear by this prosecutor and his representative at a judicial case conference (Art. 491, § 1 of the Criminal Code).

[14] M. Kurowski, comment on Art. 14 of the Criminal Code, Lex 2018, t. 17, https://sip.lex.pl/#/commentary/587388334/565445 (25.07.2019).

(past tense). In a sense, the situation regulated in Art. 57, § 2 sentence two of the Criminal Code weakens the guarantee of the prohibition under Art. 14, § 2 sentence three of the Criminal Code and allows to consider that participation of the public prosecutor in the tender process, in which the indictment was withdrawn from the state auxiliary prosecutor, is *a mutatis mutandis* revocation of his earlier declaration of withdrawal of the indictment.

Even though the indictment is a procedural document, its withdrawal may be made through an oral declaration. A phrase "I withdraw the indictment" is not required, though from a professional public prosecutor one can certainly expect that he will be using statutory sentences. Nevertheless, in accordance with Art. 118, § 1 of the Criminal Code, the significance of a legal Act is assessed according to the content of the submitted declaration, and improper marking does not deprive it of its legal significance (§ 2). Due to the oral hearing, withdrawal of the indictment "during the court proceedings" will be usually accompanied by an oral expression of the accused party, in relation to the possible consent. Consideration of the rights of the defense may result in the need to interrupt the trial in order to allow the accused party to reflect on the situation or freely consult the relevant consent with a lawyer. Since the possible consent of the accused party is a prerequisite for further action in a situation considering a withdrawal of the indictment "during the court proceedings", hence there is no need for notification of the currently not engaged in the case auxiliary prosecutor of an injured party, before the accused party has verbalized his position, about a possibility of proceeding with a case pursuant to Art. 54, § 2, sentence two of the Criminal Code for it would be premature.

Withdrawal of the indictment does not deprive the powers of the auxiliary prosecutor, for it leads to a situation, in which the outside auxiliary prosecutor becomes an auxiliary subsidiary prosecutor, what causes certain complications which will be discussed later on. The above is accepted in the doctrine by E. Kruk[15] and M. Rogalski[16], and negated by S. Steinborn, who in an auxiliary prosecutor, acting after withdrawal from the criminal trial of the public prosecutor, seeks, "despite some similarity in the process system", "outside auxiliary prosecutor", whom the author itself defines as "autonomous"[17]. Although such a view has some support in the content of Art. 54, § 2, sentence one of the Criminal Code about retaining rights ("no deprivation of rights"), and not about their extension[18]. However, it simply ignores the fact that about "outside character" of the public prosecutor it can be

[15] E. Kruk, *Skarga oskarżycielska*…, p. 294.

[16] M. Rogalski, *Zasada legalizmu w procesie karnym po noweli do kodeksu postępowania karnego, 27 September 2013*, „Prokuratura i Prawo" 2015, No. 1–2, p. 54.

[17] S. Steinborn, comment on Art. 14 of the Criminal Code, Lex 2016, t. 6, https://sip.lex.pl/#/commentary/587696219/493659 (30,07.2018).

[18] Which is an apparent counterargument, if we consider that "there is a similarity between legal remit of those prosecutors" – cf. E. Kruk, *Skarga oskarżycielska*…, p. 277.

spoken when his procedural position is ancillary in relation to the principal prosecutor, which in the cases prosecuted ex-officio before all the courts is a procurator (Art. 45, § 1). It does not seem that in the case referred to in Art. 54, § 2, sentence two of the Criminal Code, it was necessary to look for new entities, where it is enough to apply the rules widely known to science and judicature. Defending the thesis that as a result of the withdrawal of the indictment, the current outside auxiliary prosecutor takes on the features of a subsidiary auxiliary prosecutor, we may notice how the range of resources is widening, which "restrict the prosecutor's «monopol» of the public complaint and provides him with an exclusive prosecution initiative in cases related to offenses prosecuted ex-officio"[19].

The guarantee that the injured party will keep the acquired prosecution rights, explains why we cannot talk about his unequal treatment in comparison with the situation of the accused party, who has the power to consent to the subject withdrawal of the indictment by the public prosecutor. Auxiliary prosecutor is not asked for the opinion on the withdrawal of the indictment by the public prosecutor, however, he retains his full prosecution rights within the limits set by the indictment prepared by the procurator. If he does not agree with the decision of the public prosecutor, he may continue to support the accusations; otherwise, he may withdraw from the prosecution. Nevertheless, the aforementioned guarantee concerns only the injured party, who has earlier proceeded with a case as an auxiliary prosecutor. A participation of the injured party in the tender process is possible in a moment when a public prosecutor brings an indictment to the court, which can be inferred from the condition which begins the provision of Art. 54, § 1 of the Criminal Code ("if the indictment was brought"). Thus, the statement made by the aforementioned injured party will be ineffective, with a *pro futuro* attitude and in addition to the authority conducting or supervising preparatory proceedings, for it should be submitted to the authority conducting the jurisdiction proceedings[20].

Provision of Art. 54, § 2, sentence one of the Criminal Code for the aforementioned "conversion" does not require any separate declaration from the injured party, although he may give up his support for the accusation, claiming that it is beyond his strength. Nor a declaration submitted pursuant to Art. 54, § 1 of the Criminal Code, nor the transformation of the position of the auxiliary prosecutor requires a separate court decision. Failure of imposing of the obligation to submit a separate statement, on the already injured party may be dictated by the fact that the statement submitted pursuant to Art. 54, § 1 of the Criminal Code

[19] R. Kmiecik, *Posiłkowa skarga subsydiarna czy kontrola sądu nad zaniechaniem ścigania?* [in:] *Skargowy model procesu karnego. Księga ofiarowana Profesorowi Stanisławowi Stachowiakowi*, eds. A. Gerecka-Żołyńska, P. Górecki, H. Paluszkiewicz, P. Wiliński, Warszawa 2008, p. 175.

[20] Decision of SA in Gdańsk from 22 November 2017 (II AKa 58/17), „Kwartalnik Sądowy Apelacji Gdańskiej" 2018, No. 1, Item 7.

contains not only the will "to proceed with a case", but first of all the will of "accusation" within the objective and subjective limits of the accusation, indicated by a complaint previously brought up by the public prosecutor. Not all the injured parties are aware of it and therefore count on the activity of the public prosecutor, and create themselves as a kind of auditors of the prosecuto's actions before the court. Taking over the accusation from the public prosecutor and auxiliary prosecutor referred to in Art. 14, § 2 sentence one of the Criminal Code, he still remains "an entitled prosecutor". However, he gets the benefits owing to the prosecutor's withdrawal from the case of procedural independence.

In turn, the accused party who did not appear in the case, in which the indictment was withdrawn by the public prosecutor may, within 14 days from court's notification of this withdrawal, proceed with a case as an auxiliary prosecutor. If the public prosecutor withdrew the indictment "in the course of a trial, before the court of the first instance" (Art. 14, § 2, sentence two of the Criminal Code), then a regulation included in Art. 54, § 2, sentence two of the Criminal Code should be analyzed in the category of a derogation from the rule that a proceeding of an injured party with a case, instituted by the public prosecutor, may take place "until opening of court proceedings" (Art. 54, § 1 of the Criminal Code). The legislator reasonably recognized that in such a case it ought "to restore" the injured party's ability to support the accusation, which he had not done before, for he hoped that it would be done by the public prosecutor. In both discussed cases, the accusation retains its "public" or "official" nature, unlike the situation referred to in Art. 60, § 4 of the Criminal Code, where the injured party declares itself on the subject related to "upholding the accusation as a private one"[21]. However, neither sentence one and sentence two of Art. 54, § 2 of the Criminal Code does predict such an eventuality. The injured party, who has not been involved in the case so far, does not have a possibility to bring his own indictment. Nevertheless, he may at most declare himself on the subject of "participation in a tender process as an auxiliary prosecutor" (Art. 54, § 2, sentence two of the Criminal Code).

In a situation where the indictment was withdrawn "until the commencement of the trial at the first main hearing" (Art. 14, § 2, sentence one of the Criminal Code), the period of 14 days set by Art. 54, § 2, sentence two of the Criminal Code will occur simultaneously in the preceding period of the opening of court proceedings, for rarely any court decides to schedule a hearing before the final clarification of a given issue, which was included in the aforementioned notification. However, this does not mean that when the commencement of the trial will take place after the deadline for the injured party pursuant to Art. 54, § 2, sentence two

[21] It considers only this injured party, who in the event of the waiver of indictment by a procurator, considering the act of private prosecution, has not decided to bring the own indictment within 14 days from the day on which he was notified about such a waiver of indictment.

of the Criminal Code, then the injured party, who did not meet the aforementioned deadline of 14 days, will keep a possibility of proceeding with a case. An example of which could be the fifteenth and every subsequent day, as long as it is before "the commencement of the trial at the main hearing". The lack of such a possibility is a consequence of the exceptional nature of Art. 54, § 2, sentence two of the Criminal Code, which alleviates the situation of the injured party, who has not decided to participate in the tender process for legal proceedings, making the relevant decision in other procedural realities, but also its special relationship to Art. 54, § 1 of the Criminal Code, to the extent that it sets a new deadline for the injured parties, who were notified about the new state of affairs. The reason of such an inability is the fact that the term contained in Art. 54, § 1 of the Criminal Code is applied to the situation in which the indictment was "brought", and not "withdrawn" by the public prosecutor. However, both the term included in Art. 54, § 1, and its § 2 sentence two of the Criminal Code is characterized by a precise deadline[22].

The injured party previously appearing in the case as an auxiliary prosecutor, as a result of the withdrawal of the indictment by the public prosecutor, does not lose his rights (Art. 54, § 2, sentence one of the Criminal Code). The injured party who is informed about the withdrawal of the indictment may declare that proceeds with the case as an auxiliary prosecutor (Art. 54, § 2, sentence two of the Criminal Code). Following the recognition that it is a subsidiary auxiliary prosecutor, it should be noted that in the event of proceeding with a case of further injured parties, they will acquire the status of the outside auxiliary prosecutor, or – what is emphasized by T. Grzegorczyk – there can be only one auxiliary prosecutor[23] in a given case. If there has not been any auxiliary prosecutor in the case so far, then the first injured party, who following the notification pursuant to Art. 54, § 2, sentence two of the Criminal Code will apply for accession to the case, and as a consequence will become a subsidiary auxiliary prosecutor, each subsequent one will be the outside prosecutor.

Upon the withdrawal of the indictment by the public prosecutor and his withdrawal from the criminal trial, a doubt arises as to the validity of the procedure previously made by the court pursuant to Art. 56, § 1 of the Criminal Code about limitation of the number of auxiliary prosecutors. From the content of Art. 14, § 2 of the Criminal Code it is not clear whether such a restriction is still binding, or should the court revise its previous position on this matter, especially that the dismissal of the public prosecutor's case had its consequences in the "release" of one seat on the prosecution side. It seems that in the case of the withdrawal of the indictment by the public prosecutor, the court will still be bound by its earlier

[22] M. Błoński, B. Najman, *Umorzenie postępowania wskutek cofnięcia aktu oskarżenia*, „Studia Prawno-Ekonomiczne" 2015, Vol. XCIV, p. 36.

[23] T. Grzegorczyk, *Kodeks postępowania karnego*, Vol. I: *Artykuły 1–467*, Warszawa 2014, p. 281.

decision and such a decision cannot be changed. Bearing in mind that the limitation of Art. 56, § 1 of the Criminal Code equally affects the auxiliary prosecutors, who take part in proceedings initiated both as a result of complaint by a public prosecutor, and as a result of complaints made by a subsidiary prosecutor (Art. 55, § 3 of the Criminal Code). Such a maintenance of this limitation in force, also after the deadline of revocation of the indictment by the public prosecutor, will affect the actions of the court, followed by the revocation. It seems that the continuing reduction in the number of the accused parties will result in pursuant to Art. 54, § 2, sentence two of the Criminal Code inability of injured parties to join the aforementioned case, and only one that does not exceed the limit previously determined by the court. As a result, if this limit has already been exhausted in the case, the court pursuant to Art. 54, § 2, sentence two of the Criminal Code should not inform the other injured parties about a possibility of proceeding with a case, but ought to notify them about the withdrawal of the indictment and to possibly instruct them on the right to present a written position (Art. 56, § 4 of the Criminal Code). If, however, the limit under Art. 56, § 1 of the Criminal Code has not been exhausted, the court operates pursuant to Art. 54, § 2, sentence two of the Criminal Code until it is found that a certain number of the injured parties decided to participate in the case as auxiliary prosecutors. There are no obstacles for the court to limit the number of auxiliary prosecutors, after the indictment has been withdrawn by the public prosecutor pursuant to Art. 56 of the Criminal Code it does not follow that relevant decision[24]. Pursuant to Art. 56, § 1 of the Criminal Code, the court may operate in advance, but also in *ex post*. In the latter case, it will usually be an action forced by an increased interest of the injured party, which the court was unable to predict at the beginning of the jurisdictional phrase. 2019 novel did not change anything in this respect, basically limiting itself to transferring the mention of the non-appealability of the court decision pursuant to Art. 56, § 1 of the Criminal Code with the previous regulation § 3, to the newly added regulation § 1[25].

Eventually, it should be noted that the amended Art. 14, § 2 of the Criminal Code seems to predict derogation from the principle of legalism, according to which, among others: "public prosecutor [is also obliged] to bring and support the indictment – considering the Act prosecuted ex-officio". However, this is not the case if we consider that this principle was formulated by the legislator in a rational and purposeful manner. If the principle of legalism is to really serve what is provided

[24] The doctrine postulates that it is essential to make a relevant decision early enough, in order to save the injured parties unnecessary expenses and efforts. It is also possible to make a decision with retroactive effect, it means that it can also affect, with equal legal value, those injured parties who commence to proceed with the case, and also those who has already made a statement to that effect. Cf. E. Kruk, *Skarga oskarżycielska*…, p. 273.

[25] Art. 56, § 1a provided by Art. 1, point 7, letter a) of Act of 19 July 2019 (Dz.U. 2019, Item 1694).

for in Art. 10, § 2 of the Criminal Code, which, moreover, in the doctrine is noticed by numerous and recognized authors, that is holding any offender to criminal liability[26], it is in the actions of the public prosecutor to establish the innocence of the accused party and as a result of the aforementioned revoking the indictment. However, it is difficult to notice a contrary action to such a formulated objective[27]. Indeed, the purpose of accusation is not to convict someone at any cost, but what should be taken into account is the conviction that is reasonable and possible in the reality of a specific case. It is impossible to achieve the purpose of Art. 10, § 2 of the Criminal Code when the wrong person has been accused. It could be even believed that a withdrawal of indictment in the situation referred to in Art. 14, § 2 of the Criminal Code will allow to lead the preparatory proceedings in the right direction, and as a result of making new findings, bring the indictment, this time against the actual perpetrator of the Act that is the subject of any investigation (Art. 10, § 1 of the Criminal Code). Article 14, § 2 of the Criminal Code does not constitute unequal treatment of the accused party and cannot be considered as – notified by Art. 10, § 2 of the Criminal Code – dismissal from criminal liability under statute or international law for a committed crime. Article 14, § 2 of the Criminal Code can therefore be treated as a solution to ensure compliance with the principle of legality[28], and not as a solution "not conducive to (…) implementation" of this principle, as it is critically evaluated by M. Rogalski[29]. Although on the ground of the Criminal Code the legislator does not specify the reasons for withdrawing the indictment, but whether has to do it, considering that a sentence of criminal proceedings should be directed against the perpetrators of the prohibited Acts, and only they should be of interest to the judicial authorities.

The same Art. 14, § 2 of the Criminal Code may be considered as a distant "echo" of the adversarial principle, which is based on the procedural functions strictly separated among the participants of the criminal proceedings[30]. If the public prosecutor's function is to accuse (the function of accusation), then it is impossible to imagine a situation in which he would be able to achieve it without internal conviction as to the validity of the allegation covered by the prosecution complaint.

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[26] S. Waltoś, *Proces karny. Zarys systemu,* Warszawa 2005, p. 289; J. Tylman, *Zasada legalizmu w procesie karnym*, Warszawa 1965, p. 175; M. Rogalski, *Zasada legalizmu*…, p. 47.

[27] However, according to C. Kulesza, implementing to Art. 14, § 2 of the Criminal Code an institution of "withdrawal of indictment by public prosecutor" leads to legal restriction in terms of an impact of principle of legality on the court". C. Kulesza, comment on Art. 14 of the Criminal Code, https://sip.lex.pl/#/commentary/587774625/572065 (27.09.2019).

[28] T. Grzegorczyk, *Odstąpienie oskarżyciela od oskarżania w sprawach o przestępstwa ścigane z urzędu* [in:] *Rzetelny proces karny. Księga jubileuszowa Profesor Zofii Świdy*, ed. J. Skorupka, Warszawa 2009, p. 295 n.

[29] M. Rogalski, *Zasada legalizmu*…, p. 49.

[30] D. Solodov, *Zasada kontradyktoryjności postępowania karnego a rozwój teorii obrony*, „Studia Prawnoustrojowe" 2014, No. 26, p. 282.

It goes without saying that the subject of withdrawal may be an indictment drawn up in accordance with the principles referred to in Art. 332ff of the Criminal Code and subsequently brought up (sent) to the court in the form of the procedural document, but also as a "new indictment" formulated by the public prosecutor pursuant to Art. 398, § 1 of the Criminal Code even if it did not take the form of a "new" or "additional indictment" referred to in Art. 398, § 2 of the Criminal Code. Although the legislator uses the term "withdrawal of indictment", the use of this term was primarily intended to distinguish the new institution from the old renouncement of the accusation, and not to limit the public prosecutor's right to dispose of the indictment only to those cases which took the form of a separate pleading. Hence the indictment, which has not been recorded in the new or additional indictment, may be withdrawn, pursuant to Art. 14, § 2 of the Criminal Code under the conditions specified therein. Such a view is accepted in the doctrine, among others by J. Kosonoga[31].

There is a possible scenario, in which a prosecutor withdraws the indictment returned to him pursuant to Art. 337, § 1 of the Criminal Code. The doctrine notes that by the fact of returning the Act of indictment to the public prosecutor, which does not meet the formal conditions, it does not become again "the host of proceedings"[32]. The case remains pending before the court to which such an incomplete indictment was submitted, and the fate of such a procedure depends on the seriousness of the observed shortcomings[33]. Although the Act obliges the public prosecutor, who does not complain about the return order, to provide a corrected or supplemented indictment within 7 days (Art. 337, § 3 of the Criminal Code). Nevertheless, it will not matter in a situation in which the same prosecutor will note unjustified indictment made by himself. These comments do not apply to a situation where the court transfers the case to the prosecutor in order to complete any investigation, if the case files indicate significant shortcomings of this procedure pursuant to Art. 344a, § 1 of the Criminal Code. However, there is a possible situation in which the prosecutor, who – after completing investigation – brought a new indictment or stated that supports the previous one (Art. 344b of the Criminal Code), and subsequently will revoke the new or previous Act of indictment.

There is a good reason why Art. 14, § 2 of the Criminal Code does not contain premises for a decision to withdraw the indictment, for their inclusion in this provision would mean the necessity to indicate the procedural body responsible

[31] J. Kosonoga, comment on Art. 14 of the Criminal Code, Lex 2019, t. 21, https://sip.lex.pl/#/commentary/587741087/538527 (30.09.2019).

[32] K. Eichstaedt, comment on Art. 337 of the Criminal Code Procedure, Lex 2019, t. 23, https://sip.lex.pl/#/commentary/587748657/600270 (30.09.2019). However, he stays "the host of the indictment" – the Supreme Court panel in the judgement of 14 May 2019, II DSI 3/19, Lex No. 2680295.

[33] Resolution on the Supreme Court panel of 31 August 1994, I KZP 19/94, OSNKW 1994, No. 9–10, Item 56.

for their verification. This, in turn, would bring the institution of withdrawal of the indictment closer to the erstwhile withdrawal of the indictment. Decision to withdraw the indictment, although is not the subject to the control of the process, does not relieve the public prosecutor of the responsibility within the public prosecutor's office itself. The same procurator, even though in the court does not have to indicate the reasons for his decision, ought to consider, whether the criterion pursuant to Art. 64, paragraph 2 of the Law on the Prosecutor's Office[34] that is whether essentially "the results of the court proceedings do not confirm the charges", which in the doctrine is interpreted rigorously as a failure to in any way"[35] confirm these allegations. The same procurator being guilty of his decision to withdraw the Act of indictment should inform the immediate superior public prosecutor. It is rightly pointed out in the doctrine that owing to the amendment to Art. 14, § 2 of the Criminal Code, procurator – despite bringing the indictment – retained the position of the administrator of this complaint, who – under certain conditions – may withdraw them[36], which makes this activity cancellable.

Bibliography

Błoński M., Najman B., *Umorzenie postępowania wskutek cofnięcia aktu oskarżenia*, „Studia Prawno-Ekonomiczne" 2015, Vol. XCIV.

Grzegorczyk T., *Kodeks postępowania karnego*, Vol. I: *Artykuły 1–467*, Warszawa 2014.

Grzegorczyk T., *Odstąpienie oskarżyciela od oskarżania w sprawach o przestępstwa ścigane z urzędu* [in:] *Rzetelny proces karny. Księga jubileuszowa Profesor Zofii Świdy*, ed. J. Skorupka, Warszawa 2009.

Dąbkiewicz K., comment on Art. 14 of the Criminal Code Procedure, Lex 2015.

Dudka K., *Rola prokuratora w znowelizowanym postępowaniu karnym*, „Prokuratura i Prawo" 2015, No. 1–2.

Dudka K., Paluszkiewicz H., *Postępowanie karne*, Warszawa 2017.

Eichstaedt K., comment on Art. 337 of the Criminal Code Procedure, Lex 2019.

Kiełtyka A., Kotowski W., Ważny A., comment on Art. 64 of the Law on the Prosecutor's Office, Lex 2017.

Kmiecik R., *Posiłkowa skarga subsydiarna czy kontrola sądu nad zaniechaniem ścigania?* [in:] *Skargowy model procesu karnego. Księga ofiarowana Profesorowi Stanisławowi Stachowiakowi*, eds. A. Gerecka-Żołyńska, P. Górecki, H. Paluszkiewicz, P. Wiliński,Warszawa 2008.

Kosonoga J., comment on Art. 14 of the Criminal Code Procedure, Lex 2019.

Kruk E., *Skarga oskarżycielska jako przejaw realizacji prawa do oskarżania uprawnionego oskarżyciela w polskim procesie karnym*, Lublin 2016.

Kulesza C., comment on Art. 14 of the Criminal Code Procedure, Lex 2018.

[34] The Act of 28 January 2016 – the Law on the Prosecutor's Office (Dz.U. 2019, Item 740).

[35] A. Kiełtyka, W. Kotowski, A. Ważny, comment on Art. 64 of the Law on the Prosecutor's Office, Lex 2017, https://sip.lex.pl/#/commentary/587740308/537748 (27.09.2019).

[36] J. Kosonoga, comment on Art. 14 of the Criminal Code, Lex 2019, https://sip.lex.pl/#/commentary/587741087/538527 (27.09.2019).

Kurowski M., comment on Art. 14 of the Criminal Code Procedure, Lex 2018.
Marszał K., *Proces karny*, Katowice 1997.
Nowikowski I., *Odwoływalność czynności procesowych stron w polskim procesie karnym*, Lublin 2001.
Rogalski M., *Zasada legalizmu w procesie karnym po noweli do kodeksu postępowania karnego, of 27 September 2013*, „Prokuratura i Prawo" 2015, No. 1–2.
Solodov D., *Zasada kontradyktoryjności postępowania karnego a rozwój teorii obrony*, „Studia Prawnoustrojowe" 2014, No.26.
Steinborn S., comment on Art. 14 of the Criminal Code Procedure, Lex 2016.
Tylman J., *Zasada legalizmu w procesie karnym*, Warszawa 1965.
Waltoś S., *Proces karny. Zarys systemu*, Warszawa 2005.
Waltoś S., Hofmański P., *Proces karny. Zarys systemu*, Warszawa 2016.

Summary

This article discusses the issues related to the application of regulations included in Art. 14, § 2 of the Criminal Code where the withdrawal of the indictment by the public prosecutor was regulated. Moreover, the results of such an activity and the conditions of its performance were indicated. The rights of the accused and the injured party related to the withdrawal of the indictment and also the prohibition of the re-indictment against the same defendant in relation to the same criminal Act were discussed.

Keywords: indictment, withdrawal of indictment, waiver of indictment, public prosecutor, accused party, injured party, auxiliary prosecutor, criminal proceedings, discontinuation of criminal proceedings, procedural guarantees

OD „ODSTĄPIENIA OD OSKARŻENIA" DO „COFNIĘCIA AKTU OSKARŻENIA". UWAGI NA TLE ART. 14 § 2 K.P.K.

Streszczenie

W tekście omówiono problematykę związaną ze stosowaniem przepisu art. 14 § 2 k.p.k., w którym uregulowano tzw. cofnięcie aktu oskarżenia przez oskarżyciela publicznego. Wskazano na skutki tej czynności oraz warunki jej dokonania. Omówiono uprawnienia oskarżonego i pokrzywdzonego związane z cofnięciem aktu oskarżenia, a także zakaz ponownego wniesienia oskarżenia przeciwko temu samemu oskarżonemu o ten sam czyn karalny.

Słowa kluczowe: akt oskarżenia, cofnięcie aktu oskarżenia, odstąpienie od oskarżenia, oskarżyciel publiczny, oskarżony, pokrzywdzony, oskarżyciel posiłkowy, postępowanie karne, umorzenie postępowania karnego, gwarancje procesowe

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POLICE EFFORTS DURING THE CORONAVIRUS EPIDEMIC

Introduction

An epidemic, according to the encyclopaedic definition, means presence of cases of disease or other phenomena connected with health in a number greater than expected during a specific time and in specific area. Epidemics with a small number of cases, limited to a specific area and time are referred to as an epidemic focus but pandemic is considered to be an epidemic of notably large scale, on a big area spanning countries and even continents[1].

On the day of 14 March 2020 in Poland a state of epidemiological threat has been declared[2] connected with the cases of the SARS-CoV-2 virus, while on 20 March 2020 – this state has been repealed and a state of epidemic was declared for the period until it is left[3]. This state still lasts. Declaring these states caused multiple limitations in the society and economy, prohibitions and obligations imposed on the population, including ban of free movement, requirement to practise social distancing, ban on entering public parks, ban of public gatherings, closing hairdressing and beauty salons, requirement to wear face masks which is being gradually appeased or lifted – based on the scale of threat and spread of the virus. The execution of the introduced prohibitions and obligations has been handed over to many institutions, including the Police.

[1] https://encyklopedia.pwn.pl/haslo/epidemia;3898232.html (7.07.2020).

[2] Ordinance of 13 March 2020 in the case of the announcement in the area of the Republic of Poland the state of epidemiological threat (Dz.U. 2020, Item 433). This state was revoked by ordinance of 20 March 2020 (Dz.U. 2020, Item 490).

[3] Ordinance of 20 March 2020 on the declaration of an epidemic in the territory of the Republic of Poland (Dz.U. 2020, Item 491 as amended). This, as well as the previous ones, were issued under the authorization contained in Art. 46(2) and (4) of the Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans (Dz.U. 2019, Item 1239 as amended).

The aim of the article is to draw attention to the powers of the Police during the state of an epidemic and its cooperation with other bodies, but most importantly, on the Police's actions in the context of the principle of law-abidingness, proportionality and subsidiarity. Moreover, it is important to signalise efforts important from the point of view of their effectiveness, not only according to the Police, but also the society. After all, the Police are, according to the statutory definition, a formation serving the society. That is why, this article is not limited to only signalising issues connected with the cooperation of the Police with other bodies, but also to its methods and forms of conduct during the time of an epidemic.

Normative solutions

The basic normative act during an epidemic, also being the legal basis for declaring such a state, is the Act of 5 December 2008 on preventing and combating of infections and infectious diseases of people[4]. According to the legal definition included in Art. 2, point 9, an epidemic means presence of infections and cases of an infectious disease in a number significantly greater than in the previous period or an occurrence of infections of contagious diseases unencountered before. A state of an epidemic, pursuant to this Act, means a legal situation implemented in a specific area connected with an occurrence of an epidemic in order to take specific anti-epidemic and preventive measures included in the Act to minimise the consequences of an epidemic, but a state of an epidemiological threat – a legal situation implemented in a specific area connected to the threat of an epidemic in order to take preventive measures described in the Act. It is clearly emphasised in these Acts that both the state of an epidemic and the state of an epidemiological threat are specified legal situations in the country or its part. This state is a crisis situation (state of emergency), although not a state of emergency (state of an environmental disaster) included in the Constitution of the Republic of Poland[5].

Tasks during crisis situations, that are not events justifying the declaration of the state of emergency**,** are carried out by many bodies, not only the administrative bodies which create a specific system of crisis management. The bodies present in this system, function either based on the principle of management and subordination, or cooperation[6]. The aim of these measures during an epidemic (or epidemio-

[4] Dz.U. 2019, Item 1239 as amended.

[5] More: E. Ura, *Stany nadzwyczajne a sytuacje kryzysowe* [in:] *Rola i znaczenie zarządzania kryzysowego w systemie bezpieczeństwa państwa*, eds. E. Ura, S. Pieprzny, J. Jedynak, Rzeszów 2013, pp. 11–21.

[6] More: E. Ura, S. Pieprzny, *Zarządzanie kryzysowe w znaczeniu formalnym* [in:] *Zarządzanie kryzysowe w administracji*, eds. R. Częścik, Z. Nowakowski, T. Płusa, J. Rajchel, K. Rajchel, Warszawa–Dęblin 2014, pp. 116–129.

logical threat) is the improvement of the safety conditions and health of the public in areas under this state. It involves, first of all, an increased effectiveness and efficiency of all the bodies involved in the prevention and combating the existing threats, determining the tasks and rules of operation of these bodies and their proper cooperation and quick elimination of the effects of such events.

In the situation above, besides the aforementioned Act of 5 December 2008, attention should be paid to the solution accepted in the Act of 26 April 2007 on the emergency management[7].

What cannot be omitted is the fact that an epidemic is a factor influencing the state of security of the country[8]. An epidemic shapes this state. It involves establishing the rules according to which specific bodies ensuring the security of the country can carry out efforts with the purpose of counteracting, preventing and combating an epidemic. It is crucial because in situations like this, the efforts of these bodies intervene the area of rights and freedoms of the citizens. There remains the assessment if the influence of the epidemiological factors (scope of the spread of the coronavirus and its direct consequences for the health, public life and, indirectly, for the economy) rose to the level justifying declaring the state of emergency, or if other efforts made in situations of threat that do not justify this state will suffice. This issue has been and still is raised in social, political and media discussions since the beginning of the epidemic connected with COVID-19, during which there have been heard voices about the necessity of declaring such a state.

Accordingly, the crucial element being present during the state of emergency, but also the state of an epidemic, is the safeguarding of security. Although there is no statutory definition of the term security, it is one of the most fundamental conditions for functioning of every country and constitutes "the state of harmony and balance of the country's functioning and its bodies"[9]. Additionally, it is the highest, aside from life, health and environment, value protected by the Constitution[10]. The scope and scale of its infringement provides an assessment of the legitimacy of declaring the state of emergency.

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[7] Dz.U. 2019, Item 1398 as amended.

[8] More on state security cf. f.e. E. Ura, *Prawne zagadnienia bezpieczeństwa państwa*, Rzeszów 1988; S. Pieprzny, *Ochrona bezpieczeństwa i porządku publicznego w prawie administracyjnym*, Rzeszów 2007; J. Korczak, *Wojewoda – marszałek województwa – zadania w systemie bezpieczeństwa państwa* [in:] *Bezpieczeństwo wewnętrzne w terenowej administracji publicznej*, eds. A. Chajbowicz, T. Kocowski, Wrocław 2009, p. 95 n.; J. Boć, *O bezpieczeństwie wewnętrznym* [in:] *Bezpieczeństwo wewnętrzne w terenowej administracji publicznej*, eds. A. Chajbowicz, T. Kocowski, Wrocław 2009, p. 19 n.; A. Chajbowicz, *Bezpieczeństwo a pojęcia zbliżone* [in:] *Bezpieczeństwo wewnętrzne w terenowej administracji publicznej*, eds. A. Chajbowicz, T. Kocowski, Wrocław 2009, p. 37 n.

[9] J. Korczak, *Samorząd terytorialny w stanach nadzwyczajnych* [in:] *Bezpieczeństwo wewnętrzne we współczesnym państwie*, eds. E. Ura, K. Rajchel, M. Pomykała, S. Pieprzny, Rzeszów 2008, p. 211.

[10] S. Pieprzny, *Ochrona bezpieczeństwa*…, p. 18.

The system of security in every country is based on the provisions of law. Its protection, based on the level of threat to the security and the necessity of taking certain measures can be examined on three grounds. The first one refers to the "state of peace", the second ground is the safeguarding of security during the state of emergency and the third – the safeguarding of security during somewhat a transitional state between the state of peace and the state of emergency, which is the state of epidemic[11]. Therefore, it is possible to talk about the gradeability of the scale of security threat.

The idea, but not the definition, of the state of emergency has been introduced to the normative language with the Constitution of 2 April 1997. On the basis of the Art. 228 of the Constitution of the Republic of Poland, in situations of particular danger, if ordinary constitutional measures are inadequate, any of the following appropriate extraordinary measures may be introduced: martial law, a state of emergency or a state of natural disaster. It means that each of the aforementioned states is individually a state of emergency. In the Constitution, there has been established a delegation for normative Acts for detailed regulation of introduction and lifting of individual, generically aforementioned states of emergency, the rules of functioning of the public authority, the range of the limitations of human and civil freedoms and rights during the time of their validity, as well as legal basis, scope and mode of compensations of the material losses as a result of these limitations of rights and freedoms during the states of emergency. It means that the state of emergency can be introduced only on the basis of the Act, by way of a regulation, which is additionally to be publicly announced. An important constitutional restriction is for the measures carried out as a result of the introduction of the state of emergency to be adequate to the level of threat and aim to the quickest restoration of the country's regular functioning.

Acts, which realise the constitutional delegation, were passed in 2002. These are the Acts of: 18 April 2002 on the state of natural disaster[12], 21 June 21 2002 on the state of emergency[13] and 29 August 2002 on the martial law and competences of the Chief of Arms and the rules of his subjection to the constitutional bodies of the Republic of Poland[14], but also the Act of 22 November 2002 on compensations of the material losses as a result of the limitations of human and civil rights and freedoms during the state of emergency[15]. According to the last Act, everyone who suffered material loss as a result of the limitations of human and civil rights and

[11] Cf. E. Ura, S. Pieprzny, *Działania administracji publicznej w sytuacjach szczególnych* [in:] *Współczesne zagadnienia prawa i procedury administracyjnej. Księga jubileuszowa dedykowana Prof. zw. dr hab. Jackowi M. Langowi*, eds. M. Wierzbowski, J. Jagielski, A. Wiktorowska, E. Stefańska, Warszawa 2009, p. 307 n.

[12] Dz.U. 2017, Item 1897 as amended.

[13] Dz.U. 2017, Item 1928 as amended.

[14] Dz.U. 2017, Item 1932 as amended.

[15] Dz.U. No. 223, Item 1955.

freedoms during the state of emergency, has a right to compensations. These compensations include the risk loss ratio adjustment, without financial gain that the claimant could achieve if it were not for the loss. Compensations do not apply if the material loss occurred solely by fault of the claimant or a third party.

No matter what property is supposed to be protected by declaration of the state of emergency, the result of these decisions is always the limitation of civil rights and freedoms, both in personal sphere (confidentiality of correspondence) and in the sphere of political rights and freedoms (right to assembly, freedom of gathering, freedom of speech), or finally – economic rights (introduction of, among others, impose labour duty). Moreover, there are implemented certain rigors of behaviour, duties, obligations and prohibitions. That is why it is extremely important to guarantee the legitimacy of the measures taken by the administrative bodies and drawing a constitutional boundary for limitations of civil rights and freedoms, but also a parliamentary control of the legitimacy of declaring the states of emergency, which creates a legal guarantee to prevent abuse by the administrative bodies[16].

It is possible therefore, to consider epidemiological threats in the context of premises of the state of natural disasters. Declaring such a state belongs to the powers of the Council of Ministers. It can be declared across the country in order to prevent or to eliminate the consequences of natural disasters or technical failures with features of a natural disaster. The length of this state is limited to no more than 30 days. An extension of this period can be approved by the Parliament (Sejm). This state can be declared in the area of a natural disaster, but also in the area where its effects have or can occur.

The definition of a natural disaster has been included in the Act on the state of natural disaster. Natural disasters are disasters or technical failures which effects are a threat to life or health of a large number of people, great amount of property or significant parts of the environment, but help and protection can be effectively provided only by use of extraordinary measures, with cooperation of different bodies and institutions, and specialised forces and formations functioning under a consolidated management. A natural disaster is an event connected with the forces of nature, which are, particularly, lightnings, strong winds, heavy precipitations, long-term extreme temperatures, fires, droughts, floods, mass pest infestations, plant or animal diseases, or infectious human diseases or activity of other element. Therefore, it can be considered that the coronavirus epidemic is an event consisting in the definition of a natural disaster.

[16] Cf. more: E. Ura, S. Pieprzny, *Ograniczenia praw jednostki w czasie stanów nadzwyczajnych* [in:] *Prawne gwarancje ochrony praw jednostki wobec działań administracji publicznej*, ed. E. Ura, Rzeszów 2002, p. 495 n.; E. Ura, *Uprawnienia organów administracji w czasie stanu klęski żywiołowej* [in:] *Nauka administracji wobec wyzwań współczesnego państwa prawa*, ed. J. Łukasiewicz, Rzeszów 2002, p. 537 n.

Declaring states of emergency, as it stems from the constitution, can occur only if in the case of a crisis, elimination or limitation of its effects will not be possible without using normal legal measures possessed by the national bodies in normal conditions of function. It means that not every natural disaster or threat to the national security is in consequence declared the state of emergency. It is also essential do deem the normal constitutional measures insufficient in these conditions. This condition is included in the Art. 228 of the Constitution, but this recognition depends on the bodies mentioned in the constitution. So, the optionality of declaring the states of emergency points out that the existence of statutory premises does not oblige the authorised body to declare the state of emergency. An assessment of the event implying the declaration of the state of emergency will be conditioned by many factors, but above all, the scale of the crisis and the amount of necessary forces and resources. As a result, the government authorities, including the administrative bodies especially, should be equipped with regular legal means which enable them to act during crisis situations without frequent necessity to use extraordinary measures, such as the states of emergency[17].

That is why it is possible to point out the third ground that includes the level of threat to the security. It applies to situations where a certain event is a threat to the legally protected property and the scope, intensity and scale of this threat fulfils the features of a crisis situation. Although it is still a normal state of the country's functioning, the event that occurred "disrupts" it severely enough, so that, because of the level of security threat and the necessity of its protection, the state cannot be considered to be peaceful. At the same time, this threat does not fully exhaust the premises to declare one of the constitutional states of emergency. That is why, apart from the states of emergency specified in the constitution, there should be distinguished crisis situations that do not justify the declaration of the state of emergency[18]. Such a state has been considered to be, thus far, the state of epidemic caused by the coronavirus. Here can be quoted W. Sadurski, who referring the Act on the crisis management claimed that this Act is "a recipe to circumvent different conditions stated by the constitution for the states of emergency, that allows the public authority to act according to measures allowed during such states – but without meeting the constitutional requirements as applicable to the states of emergency[19].

Declaring the state of epidemiological threat or the state of epidemic

Under Art. 46 of the Act on preventing and combating of infections and contagious diseases of people, the state of epidemiological emergency or state of epi-

[17] M. Smaga, *Administracja publiczna w czasie klęski żywiołowej*, Kraków 2004, p. 10.

[18] E. Ura, S. Pieprzny, *Działania administracji*…, p. 311.

[19] W. Sadurski, *Porządek konstytucyjny* [in:] *Demokracja w Polsce 2005–2007*, eds. L. Kolarska-Bobińska, J. Kucharczyk, J. Zbieranek, Warszawa 2007, p. 51.

demic in a voivodeship or its part is declared or lifted by the voivode by way of a regulation upon the request of the provincial sanitary inspector. If the state of an epidemiological threat or state of epidemic is present in the area bigger than one voivodeship, the state of epidemiological threat or state of epidemic is declared and lifted by way of regulation by the minister in charge of health in concert with the minister in charge of public administration, upon request of the Chief Sanitary Inspector.

Limitations of civil rights and freedoms

On the basis of the Act on the crisis management, public administrative bodies are obliged to take measures connected to the preventing crisis situations, preparation for its containment and reaction in the case of their occurrence. This Act, however, does not provide the limitations of civil rights and freedoms. It includes the statutory definition, which states that the crisis situation is a situation negatively impacting the level of public security, large portions of property or the environment, causing severe limitations in the functioning of relevant bodies of public administration on the account of inadequacy of possessed means and resources (Art. 3, point 1). That is why, in this area we apply the Act on preventing and combating infections and infectious diseases of humans with amendments introduced in the Act of 2 March on special solutions connected to preventing, counteracting and combating COVID-19, other contagious diseases and the crisis situations caused by them[20].

Upon declaring the state of epidemiological threat of the state of epidemic, the minister in charge of health or voivode can impose a vaccination obligation. What is more, in the regulations published based on the aforementioned Act, there can be imposed:

- temporary limitation of a specific type of movement[21],
- temporary limitation or prohibition of trading and using specific items or food produce,
- temporary limitation of functioning of specific institutions or workplaces,
- prohibition of organisation of shows and other public assemblies,
- obligation to perform specific sanitary procedures if their performance is connected to the functioning of specified production, service, trading or other facilities,

[20] Dz.U. 2020, Item 374 as amended.

[21] Specific movement restrictions in connection with a reported virus epidemic COVID-19 consisted, for example, in the period from 15 March 2020 until it was left. The movement of passengers in rail and air transport with crossing the border of the Republic of Poland was suspended. A person crossing the state border in order to go to his place of residence or stay in the territory of the Republic of Poland was obliged, among others, to go, after crossing the state border, to a compulsory quarantine lasting 14 days from the day following the crossing of that border.

– order to facilitate real estate, spaces, areas and provide means of transport for anti- epidemic measures regulated by the anti-epidemic agendas,
– order to perform vaccinations and the groups applicable for the vaccinations, the type of the vaccinations conducted
– including the ways of spreading of the infections and contagious diseases and the epidemiological situation in the area where the state of epidemiological threat or the state of epidemic has been announced (Art. 46, paragraph 4 of the Act). The regulations are immediately announced in the proper Journal of Laws (pol. Dziennik Ustaw), according to the laws of announcing normative acts and become effective upon the day of the announcement and are, moreover, announced in a customary manner.

Police efforts during the state of epidemic

In situations of specific threats, the functioning of the public administration has to distinguish itself with great efficiency and effectiveness, bigger than it is expected during times of peace that does not threaten the security. The tasks carried out in such a situation involve cooperation with specialised bodies. And so, on the basis on the Act, against a person that does not submit to the vaccination obligation, sanitary and epidemiological examinations, sanitary procedures, quarantine or obligatory isolation, and who is suspected to have or confirmed to carry a particularly hazardous and highly contagious disease causing a direct threat to other people's life and health, can be used means of physical coercion in a form of holding, immobilisation and forced administration of medications. The decision of applying such a mean of physical coercion is made by the medical doctor or medical assistant, who can ask the Police, Border Guard or Military Police for help in using a mean of physical coercion. Help is provided under the condition the officer or soldier has been provided with resourced protecting from infectious diseases by this medical doctor or medical assistant. Holding is a temporary, brief immobilisation of a person by means of physical force, however, immobilisation is a longer-term incapacitation of a person by use of belts, handles, bedsheets or a straitjacket. Forced administration of medications is a temporary, or by the medical treatment plan, mean of administration of medications into the person's body – without their consent (Art. 36 of the Act).

Article 43 of the Act imposes a duty of cooperation and interoperability during the preformation of tasks in protection of the public health from infections and infectious diseases. This cooperation also applies to the Police. In order to carry out these tasks, the Police can take actions evident from the statutory powers, with exception to the measures included in the Art. 19–19b of the Act of 6 April 1990 of the Act on the Police[22]. The Act points out that the owner of the critical infra-

[22] Dz.U. 2020, Item 360. Art. 19–19b Acts regulate such operational and exploratory activities as: operational control, controlled purchase and discreet supervision.

structure, including devices for telecommunication, providing electrical power, water, heat, crude oil, fuels or gas and sewage disposal, or their authorised representative, whose infrastructure or devices are located on the property belonging to third parties, can during the period of the epidemiological threat, epidemic or state of emergency request the relevant local commanding officer to provide assistance of police officers in order to enter the property, including buildings, also with use of measures eliminating existing security, in order to conduct actions necessary for the continuity of providing services, including construction works. A police officer's assistance is provided immediately. The police officer providing assistance in carrying out these activities, ensures safety of the participants, especially considering respect for the dignity of the people participating in these activities and ensures proper conduct.

The Police have been formed on the basis of the Act of 6 April 1990[23]. In the field of constitutional-political changes occurring at the time[24]. In the Art. 1, paragraph 1, the Police has been defined as a uniformed and armed formation devoted to the safeguarding of security of the civilians and protection of security and public order This definition differs from the regulations concerning the previously functioning formation of the Civic Militia[25]. In 1995, a change has been introduced to the original definition of the police included in the Art. 1, paragraph 1: "The Police is being created as a uniformed and armed formation devoted to the safeguarding of security of the civilians and protection of security and public order". S. Pieprzny stressed that "However it may seem that it is a cosmetical change, the analysis of the wording used here has a deeper purport in the assessment of the scope of the police's tasks"[26]. By accepting such a definition, the ancillary role of the Police in relation to an individual has been stressed and it was pointed out that the Police as a new formation in a democratic country is not only a formation serving solely the country[27].

At the same time, which has been pointed out by the Provincial Administrative Court in Warsaw in the verdict of 14 August 2008, the Police as the formation which definition has been included in the Act, "is one of the institutions that administers very severe, for a citizen, measures for the execution of the government authority. A particular social role of this professional group and its hierarchical structure involves for its effective and proper functioning obeying other, aside from the norms of the criminal and misdemeanour law, orders and rules"[28].

[23] Dz.U. No. 30, Item 179.

[24] More: S. Pieprzny, *Policja. Organizacja i funkcjonowanie*, Warszawa 2011, p. 16 n.

[25] E. Ura, *Zmiany w organizacji i strukturze Policji wprowadzane od 1990 r.* [in:] *100-lecie Policji. Organizacja i funkcjonowanie*, eds. E. Ura. M. Pomykała, S. Pieprzny, Rzeszów 2019, p. 155 n.

[26] S. Pieprzny, *Policja. organziacja*…, p. 18.

[27] E. Ura, *Organy i struktura organizacyjna policji – ujęcie historyczne* [in:] *100 lat resortu spraw wewnętrznych w Polsce (1918–2018)*, eds. P. Majer, E. Zgajewska-Rytelewska, Olsztyn 2018, p. 114 n.

[28] II SA/Wa 512/08, Lex No. 515679.

The court pointed out, what is important, that the social role of this formation, the nature of the assigned tasks and the competence but also the public trust connected with its functioning result in the fact that it also should counteract such activities that could undermine its credibility in the public eye, especially given the fact that many powers granted to the Police allow it to intervene in the sphere of civil freedoms and rights"[29].

The aforementioned content should be connected with the regulation in the Art. 14, paragraph 3 of Act on the Police, in which the legislator stressed that the police officers, during the course of executing official duties, are obliged to respect human dignity and obey and protect human rights. This obligation remains closely related to the content of the Art. 30, paragraph 1 of the Constitution stressing the inherent and inalienable dignity of the person as a source of freedoms and rights of persons and citizens.

Finally, attention should be paid to the content of Art. 15, paragraph 6 on the Act on the Police, pursuant to which, the measures mentioned in the paragraph 1 of this Art[30]. should be executed in a way that harms the personal rights of the person against whom there are applied as little as possible.

The aforementioned laws of the Act on the Police clearly point out the basic rules of the functioning of the Police, which also apply during the activities performed in the state of epidemic. The principle of proportionality of applied measures and the principle of law-abidingness – these are two fundamental rules that the police officers are not excused form obeying eighter in the state of epidemic, or state of emergency. What is more, the police activities cannot undermine the description of this formation included in the statutory definition as a formation serving the society. That is why controlling these prohibitions and obligations in the society cannot infringe these principles. Unfortunately, examples from media point out that these principles are not always obeyed by the police officers while performing their tasks.

Conclusions

The state of epidemic and the regulations and prohibitions for the citizens introduced in connection with it evoke fear, concerns, stress and anxiety. In this situation it extremely crucial, on one hand, for the citizens to obey the regulations of everyday life, introduced prohibitions, but on the other hand, the functioning of the public administrative bodies as well as other bodies responsible for

[29] *Ibidem*.

[30] Art. 15, paragraph 1 defines powers of the Police in performing activities, among others, the right to: identification of persons in order to establish their identity; detaining persons in the manner and cases specified in the regulations of the Criminal Code and other Acts. Detaining persons posing a direct threat to human life and health, as well as to property.

counteraction, combating and preventing infections by COVID-19, undergo changes. In the meantime, crucial tasks have been taken over by the Police. Police officers, in cooperation with the Sanitary Inspectorate, were ordered to, for example, control the obligation to quarantine for the people ordered to do so, or control the ban on free movement and the order to wear face masks. The analysis of the laws regulating prohibitions points out however, that many of them are unambiguous, leaving a big deterministic liberty (margin of decision) to the bodies controlling and executing the imposed obligations. In such a situation it seems that the police officers should to a greater extent use persuasive methods first, using non-executive measures (e.g. instruction), and not resort to executive measures and levying fines right away. The principle of proportionality would be performed in that way as well. They cannot also forget about the fundamental rule of indefeasibility of other people's dignity. Rules of cooperation with other bodies should be clearly stated as well.

Bibliography

Boć J., *O bezpieczeństwie wewnętrznym* [in:] *Bezpieczeństwo wewnętrzne w terenowej administracji publicznej*, eds. A. Chajbowicz, T. Kocowski, Wrocław 2009.

Chajbowicz A., *Bezpieczeństwo a pojęcia zbliżone* [in:] *Bezpieczeństwo wewnętrzne w terenowej administracji publicznej*, eds. A. Chajbowicz, T. Kocowski, Wrocław 2009.

Korczak J., *Samorząd terytorialny w stanach nadzwyczajnych* [in:] *Bezpieczeństwo wewnętrzne we współczesnym państwie*, eds. E. Ura, K. Rajchel, M. Pomykała, S. Pieprzny, Rzeszów 2008.

Korczak J., *Wojewoda – marszałek województwa – zadania w systemie bezpieczeństwa państwa* [in:] *Bezpieczeństwo wewnętrzne w terenowej administracji publicznej*, eds. A. Chajbowicz, T. Kocowski, Wrocław 2009.

Pieprzny S., *Ochrona bezpieczeństwa i porządku publicznego w prawie administracyjnym*, Rzeszów 2007.

Pieprzny S., *Policja. Organizacja i funkcjonowanie*, Warszawa 2011.

Sadurski W., *Porządek konstytucyjny* [in:] *Demokracja w Polsce 2005–2007*, eds. L. Kolarska-Bobińska, J. Kucharczyk, J. Zbieranek, Warszawa 2007.

Smaga M., *Administracja publiczna w czasie klęski żywiołowej*, Kraków 2004.

Ura E., *Organy i struktura organizacyjna policji – ujęcie historyczne* [in:] *100 lat resortu spraw wewnętrznych w Polsce (1918–2018)*, eds. P. Majer, E. Zgajewska-Rytelewska, Olsztyn 2018.

Ura E., *Prawne zagadnienia bezpieczeństwa państwa*, Rzeszów 1988.

Ura E, *Stany nadzwyczajne a sytuacje kryzysowe* [in:] *Rola i znaczenie zarządzania kryzysowego w systemie bezpieczeństwa państwa*, eds. E. Ura, S. Pieprzny, J. Jedynak, Rzeszów 2013.

Ura E., *Uprawnienia organów administracji w czasie stanu klęski żywiołowej* [in:] *Nauka administracji wobec wyzwań współczesnego państwa prawa*, ed. J. Łukasiewicz, Rzeszów 2002.

Ura E., *Zmiany w organizacji i strukturze Policji wprowadzane od 1990 r.* [in:] *100-lecie Policji. Organizacja i funkcjonowanie*, eds. E. Ura. M. Pomykała, S. Pieprzny, Rzeszów 2019.

Ura E., Pieprzny S., *Działania administracji publicznej w sytuacjach szczególnych* [in:] *Współczesne zagadnienia prawa i procedury administracyjnej. Księga jubileuszowa dedykowana Prof. zw. dr hab. Jackowi M. Langowi*, eds. M. Wierzbowski, J. Jagielski, A. Wiktorowska, E. Stefańska, Warszawa 2009.

Ura E., Pieprzny S., *Ograniczenia praw jednostki w czasie stanów nadzwyczajnych* [in:] *Prawne gwarancje ochrony praw jednostki wobec działań administracji publicznej*, ed., E. Ura, Rzeszów 2002.
Ura E., Pieprzny S., *Zarządzanie kryzysowe w znaczeniu formalnym* [in:] *Zarządzanie kryzysowe w administracji*, eds. R. Częścik, Z. Nowakowski, T. Płusa, J. Rajchel, K. Rajchel, Warszawa–Dęblin 2014.

Summary

The aim of this article is to draw attention to the Police efforts during the state of epidemic announced on 25 March 2020 connected to the COVID-19 virus. These efforts are being made on the basis of particular laws in force during this state, but also on the basis of the rules in the penal code. The execution of specific tasks involves effectiveness, which ensures proper cooperation of many bodies, including the cooperation of the epidemiological services with the Police and units of medical rescue. It is important, however, to obey the rule of proportionality in applying certain measures of power in the institutions involved in the execution of prohibitions and obligations of specific behaviour during the state of epidemic. The measures of power cannot also lead to disruptions of the principle of law-abidingness.

Keywords: epidemic, cooperation, Police, measures of conduct, rules of conduct, execution of prohibitions and regulations

DZIAŁANIA POLICJI W CZASIE EPIDEMII KORONAWIRUSA

Streszczenie

Celem artykułu jest zwrócenie uwagi na działania Policji w czasie ogłoszonego 15 marca 2020 r. stanu epidemii w związku z wirusem COVID-19. Działania te podejmowane są na podstawie przepisów szczególnych obowiązujących w tym stanie, jak też na podstawie przepisów Kodeksu wykroczeń. Wykonywanie określonych zadań wymaga skuteczności, która zapewnia właściwe współdziałanie wielu podmiotów, w tym współdziałanie służb epidemiologicznych z Policją i jednostkami ratownictwa medycznego. Istotne znaczenie ma jednak przestrzeganie zasady proporcjonalności w stosowaniu określonych środków władczych w sytuacjach związanych z egzekwowaniem zakazów i nakazów określonego zachowania się w stanie epidemii. Działania władcze nie mogą też prowadzić do naruszenia zasady praworządności.

Słowa kluczowe: epidemia, współdziałanie, Policja, metody działania, zasady działania, egzekwowanie zakazów i nakazów

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DECISION AS A LEGAL FORM OF ISSUING A WEAPON LICENSE FOR A POLICE OFFICER

The word weapon in prehistoric times was the name of the action, it meant "battle, battle", and referred to both the phase of attack and defence. In addition to this functional meaning, a secondary objective meaning "combat tool" was created, which became the main meaning[1]. So the concept of weapons is understood very broadly, because weapons are commonly considered as a combat tool for defence or attack[2].

Issues related to firearms are regulated in the Act of 21 May 1999. about weapons and ammunition[3]. This act lays down the rules for issuing and withdrawing permits for weapons, the acquisition, registration, storage, sale and deposit of weapons and ammunition, carriage through the territory of the Republic of Poland, as well as the import from abroad and the export of weapons and ammunition abroad, as well as the rules on possessing weapons and ammunition by foreigners and how the shooting ranges operate. It divides weapons into four types:

1) firearms, including combat, hunting, sport, gas, alarm and signal weapons,
2) pneumatic weapon,
3) stunting gas throwers,
4) tools and devices, the use of which may threaten life or health:
   a) melee weapons in the form of:
      – blades hidden in objects that do not look like weapons,
      – brass knuckles and knuckles,
      – clubs with a tip of heavy and hard material or containing inserts of such material,
      – clubs made of wood or other heavy and hard material imitating a baseball bat,

[1] https://sjp.pwn.pl/poradnia/haslo/bron;6826.html (10.06.2020).

[2] S. Maj, *Ustawa o broni i amunicji. Komentarz*, Lex/el. 2010 (10.06.2020).

[3] Dz.U. 2020, Item 955.

b) a bow weapon in the form of crossbows,
c) items intended to incapacitate persons by means of electricity.

The definition of firearms has been regulated in detail in Art. 7, item 1 of the Act on Weapons and Ammunition, according to which any portable barrel weapon that launches, is designed to be fired or can be adapted to shoot one or more projectiles or substances as a result of the action of the propellant. However, as indicated by the Supreme Court in the decision of 22 January 2003, the act contains an incomplete scope definition of firearms, because it does not list all elements of the set of devices referred to as firearms, including only by way of example (as determined by the phrase "including"), among others gas, alarm weapons, etc. In other words, firearms will also include devices other than just combat, hunting, sports, gas, alarm and signal weapons. These may be atypical devices that will appear, obviously, with the ever faster technical development of types and types of weapons, and which, without being a combat, hunting, sport, gas, alarm and signal weapon, will meet the criteria contained in the content definition from the Art. 7 of the Act. It is clear, therefore, that Art. 7 of this act contains a substantive definition of the concept of firearms, indicating all these characteristics to which all elements of the set of devices referred to as firearms must comply, and not only those which have been mentioned, for example, in the scope definition adopted in Art. 4, item 1, point 1. In other words, firearms are all devices that are included in it in Art. 4, item 1, point 1, and unnamed ones that may appear in the future. Therefore, when interpreting the provisions of Art. 4, item 1, point 1 and Art. 7 of the Act, in order to determine whether a device should be included in a firearm, it is necessary to check whether it is covered by an incomplete scope definition (if so, it is undoubtedly a firearm), and if not, then, using the content definition from Art. 7 of the Act, determine whether it meets the criteria listed therein[4]. On the other hand, the Court of Appeal in Kraków does not recognize as a firearm a characteristic of the stricter legal qualification of some units of gas, signal, take-off, bang, various scare weapons, corkers and other toys. They are not dangerous to life or health. The court decided that in cases concerning these offenses one should not uncritically take over the provisions of Art. 4, item 1 of the Act. Indeed, although they are significant for the production of weapons or rotate, guaranteed standards blankietowymi Art. 263, § 1–4 of the Criminal Code should not be transferred to the crimes in which the perpetrator of the wine does not depend on the regulation of administrative law, as the law on weapons[5].

For many decades, the concept of firearms did not have a legal definition that clearly defined what could be considered a firearm and what could not be considered such a weapon. This was a fairly serious problem, because firearms were subject to and still subject to rationing, and the lack of an unambiguous defini-

[4] I KZP 40/02, OSNKW 2003, No. 1–2, Item 11.

[5] Judgment of the Court of Appeal in Krakow of 5 December 2001, II AKa 269/01, Lex No. 56684.

tion led to the fact that it was unclear whether an item could be classified as a firearm and thus regulate it, or whether it could not be regulated. The lack of a clear definition of firearms was also troublesome in criminal matters. The science of forensics decided to be the first to clearly define the term "firearms" in order to resolve all doubts, which resulted in the definition of firearms in Art. 7, item 1 of the Act on arms and ammunition[6].

Various definitions of firearms appear in the literature. According to T. Hanusk, a firearm is a tool (instrument) which, in its intended use, can be dangerous to human life or health and is capable of repeated bullet shooting at a considerable distance and has the ability to shoot bullets or non-solid substances, as well as thermal or optical effects due to the use of electromagnetic waves[7]. In turn, S. Adamczak defines firearms as an instrument (device) in which compressed gases, generated during the burning of the propellant, eject a projectile (projectiles) from the barrel or an element replacing it[8].

On the other hand, in colloquial language, firearms are most often understood as a tool with which an object (bullet) is launched, which offends selected targets from a given distance, while in technical language firearms are most often defined as weapons that eject bullets with the force of gases generated during the burning of gunpowder[9].

In view of the above, it is difficult to point to one definition of the concept of firearms. In case of doubt, the question whether a given device is a firearm is evaluated by experts and ultimately the courts decide[10]. The central role in the examination of the above is fulfilled by the Central Forensic Laboratory of the General Police Headquarters and forensic laboratories at the provincial police headquarters. The tasks of the Central Forensic Laboratory of the Police Headquarters include the performance of expert work in the field of forensics, including approval of technical specifications and confirmation of deprivation of firearms' functional features.

In the Polish legal system, two groups of entities may apply for access to firearms. They are natural persons and legal persons.

Natural persons may purchase and possess weapons on the basis of an issued permit pursuant to the provisions of the Act on arms and ammunition. However, there are several groups that receive access to firearms on slightly different rules. The first of these groups are officers and soldiers. Pursuant to Art. 3, point 1 of the Act on arms and ammunition, the provisions of the Act do not apply to arms and ammunition constituting the armament of the Armed Forces of the Republic of Po-

[6] R. Rejmaniak, *Wyrabianie, handel i posiadanie broni palnej oraz amunicji*, Toruń 2017, p. 21.

[7] T. Hanusek, *Problemy z bronią palną*, „Gazeta Policyjna" 1998, No. 47.

[8] S. Adamczak, *Pojęcie broni palnej*, „Problemy Kryminalistyki" 1967, No. 66, p. 205.

[9] https://sjp.pwn.pl/sjp/bron-palna;2446158.html (10.06.2020).

[10] S. Maj, *Ustawa o broni*…

land, the Police, the Internal Security Agency, the Foreign Intelligence Service, the Military Counterintelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau, the State Protection Service, Border Guards, Marshal Guards, Customs and Tax Service, Prison Service and other state armed formations, for which access to arms and ammunition is regulated by separate provisions.

Qualified security guards are another group of natural persons using firearms. Pursuant to Art. 36, paragraph 1, point 5 of the Act of 22 August 1997 on the protection of persons and property[11], security guard while performing the tasks of protecting persons and property has the right to use or use firearms:

- within the limits of protected facilities and areas, and
- outside of protected facilities and areas.

Detailed rules for the use of weapons by the aforementioned groups of persons are regulated by the provisions of the Act of 24 May 2013 on direct coercion measures and firearms[12]. Security guards also use firearms on a daily basis, and they have access to firearms used for official purposes on a slightly different basis[13].

The last group of entities belonging to natural persons are employees of diplomatic and consular missions and foreigners. Pursuant to Art. 39, item of the Act on arms and ammunition, members of diplomatic missions and consular posts, as well as persons equated with them under international agreements, may possess weapons and ammunition under international agreements or on the basis of reciprocity for the purposes of: 1) personal protection; 2) hunting; 3) sports; 4) collector's items; 5) commemorative. These persons may possess a weapon on the basis of an appropriate permit issued by a competent police authority. On the other hand, other foreigners may possess firearms based on, among others European Firearms Charter, international agreements or reciprocity agreements, which is often used in international law[14]. On the basis of this card, a foreigner may legally move with a weapon to another EU country.

Considering the above, it should be pointed out that many natural persons use firearms on a daily basis pursuant to separate regulations but, which should be emphasized, only during the performance of their service. In a situation where these people want to have a weapon for their own use, they must apply for a permit on general terms.

Legal entities are the second category of entities that may have access to firearms. These persons will have access to firearms based on a weapon certificate issued by the competent authority. The weapon certificate is nothing but a gun

[11] Dz.U. 2020, Item 838 as amended.

[12] Dz.U. 2019, Item 2418 as amended

[13] M. Jurgilewicz, *Rola podmiotów uprawnionych do użycia lub wykorzystania środków przymusu bezpośredniego i broni palnej w ochronie bezpieczeństwa i porządku publicznego*, Siedlce 2017, pp. 300–303.

[14] W. Góralczyk, S. Sawicki, *Prawo międzynarodowe publiczne w zarysie*, Warszawa 2015, p. 28.

permit, except that the permit is issued for the so-called bearer. The possession of a weapon certificate by a legal person is not tantamount to the fact that every employee of this entity may use a weapon. Employees who will perform activities from the employment relationship for which they need a weapon will have to undergo a procedure after which they will obtain permission to use the weapon, but only for the purposes of performing their work.

To entities that are not natural persons the act on weapons and ammunition includes:

- entrepreneurs and organizational units that have established internal security services on the basis of separate provisions, if the weapon is necessary for the performance of these services by the security services,
- entrepreneurs who have obtained concessions for conducting business activities in the field of security services for persons and property, if the weapons are necessary for them in the scope and forms specified in the concession,
- entities operating a shooting range,
- schools, sporting and hunting organizations, defense associations for the purpose of training and carrying out shooting exercises or other educational establishments as well as course organizers educating the security officer,
- entities performing tasks related to the implementation of films and other artistic undertakings,
- offices, institutions, plants, entrepreneurs and other entities whose employees weapons are necessary for personal protection in connection with the performance of their employee duties related to particular exposure to attacks on life or health,
- entities, which weapons are necessary to call for help, rescue, search and signal the start of competition in sports competitions.

As already indicated above, one of the groups of entities applying for a weapon, including firearms, are police officers. Firearms and ammunition for these weapons, pursuant to Art. 9 of the Act on weapons and ammunition, may be held on the basis of a weapon permit issued by the competent for the place of permanent residence of the person concerned or the seat of the entity concerned by the provincial police commander. Derogations from the obligation to possess a gun permit are provided for in Art. 11 of the Act and apply to:

- collecting weapons in museum collections based on separate provisions,
- use of weapons for sporting, training or recreational purposes at the shooting range operating on the basis of the permission of the competent authority,
- the use of signal and alarm firearms for the purpose of calling for help, rescue, search and by persons authorized to signal the start of sporting competition during sporting competitions, if it requires such signaling,
- disposal of arms by entrepreneurs trading in arms and ammunition on the basis of concessions or providing gunsmith services on the basis of separate provisions, as long as it is directly related to conducting business activity,

– disposing of weapons transferred to deprive or confirm deprivation of functional characteristics,
– possessing firearms without functional features,
– possessing objects intended to incapacitate persons by means of electricity with an average value of current in the circuit not exceeding 10 mA,
– having manual incapacitation gas throwers,
– possessing a pneumatic weapon,
– possessing separate loading firearms manufactured before 1885 and replicas of these weapons,
– possessing an alarm firearm with a caliber up to 6 mm.

However, it should also be noted that in the case of weapons that are characterized by weaker firepower, such as gas throwers or pneumatic weapons, the competent authority for issuing the permit or its registration is the poviat police commander, and in some cases the municipal commander may also be the competent authority Police, which in selected urban areas is the equivalent of the poviat police commander.

Weapon permits may be issued for personal protection purposes. The conditions for granting permission for these purposes are specified in Art. 10, item 3, point 1 of the Act. To obtain a permit on this basis, the applicant should show an important reason justifying that at the time of his application there is a permanent, real and above average threat to his life, health or property. The authority, after confirming that all the conditions listed in the provision actually exist, also on the date of the resolution of the case, unless there are reasons excluding the granting of the permit, should issue a decision appropriate to the circumstances of the case. As noted by the Supreme Administrative Court, the condition for granting a weapon permit for personal protection purposes is therefore a strictly defined legal relationship of circumstances, which, when combined, may constitute an important reason justifying the granting of a permit. One of these prerequisites is a permanent threat to the applicant's life, health or property, which cannot therefore be a circumstance that has occurred in the past and is no longer present, since there is no permanent risk element. Since all three of the listed premises characterizing the threat (stability, reality and above average) must occur jointly, the statement that one of them does not occur means that the remaining premises lose their raison d'être in the sense that they cannot justify successfully applying for a weapon permit. Therefore, even a real and above average threat, which is not permanent, but has happened in the past and is no longer present, cannot be considered an important reason for granting a weapon permit for personal protection[15].

The basic condition for issuing a weapon permit is that the applicant does not pose a threat to himself, public order or security and will provide a valid reason for having a gun.

[15] Judgment of the Supreme Administrative Court of 25 June 2015, II OSK 2836/13, Lex No. 1780579.

Before issuing a firearm to a police officer, his knowledge of the construction and operating principles of the firearms awarded and the safety conditions of using firearms are checked. Verification activities are carried out by a person or persons appointed by the head of the Police unit or a person authorized by him. You can refrain from checking the knowledge of a police officer in the above scope if a police officer is granted a short firearm no later than 12 months from the date of completing basic vocational training or who is re-awarded a firearm of the same type[16]. The competent authority issues a weapon permit after passing the exam by the police officer, which is conducted before a commission appointed by the competent police authority. The exam concerns the knowledge of the rules regarding the possession and use of a given weapon and the ability to use that weapon. Detailed rules are set out in the ordinance of the Minister of the Interior and Administration regarding the exam on knowledge of the provisions on the possession of weapons and the ability to use weapons[17].

In the procedure for issuing a permit for weapons, doctors and psychologists play an important role, who check whether a given applicant for a weapon has any health contraindications. Lists of such doctors and psychologists who can issue decisions regarding access to weapons are kept by each voivodship commander of the Police for each voivodship[18]. The medical examination includes a general assessment of the state of health, with particular emphasis on the nervous system, mental state, condition of the organ of vision, hearing and balance as well as efficiency of the musculoskeletal system. The doctor conducting this examination directs the applicant for psychiatric and ophthalmological examinations, and if he deems it necessary – for other specialist or auxiliary examinations. The applicant's psychological examination includes, in particular, determining the level of intellectual development and description of personality traits, including functioning in difficult situations, as well as determining the level of social maturity of that person.

The permit for a weapon is issued at the request of the person concerned (a police officer), which means that under no circumstances may proceedings be instituted ex officio. The application shall include the applicant's data, taking into account the place of employment, any weapon licenses held and the number of weapons units held. The application shall also provide information on whether the applicant has previously received a refusal or withdrawal decision, as well as

[16] § 5, points 1 and 2 of the Regulation No. 24 of the Police Commander-in-Chief of 21 July 2015 on detailed rules for the granting and use of firearms by police officers (Dz.Urz. KGP 2015, Item 57 as amended).

[17] Ordinance of the Minister of the Interior and Administration of 20 March 2000 on the examination of knowledge of the provisions on the possession of weapons and the ability to use weapons (Dz.U. 2017, Item 1756).

[18] A. Babiński, *Udział organów Policji w reglamentacji broni i amunicji* [in:] *Prawo policyjne*, eds. M. Czuryk, M. Karpiuk, J. Kostrubiec, K. Orzeszny, Warszawa 2014, pp. 122–123.

information on no criminal record. The application is accompanied by a medical and psychological certificate stating that the applicant may have a weapon, issued by an authorized doctor and psychologist, not earlier than 3 months before the date of submission of the application. Each application must also include the justification for the need to have a permit for a weapon.

In the event of a negative decision in which experts state that the state of health of the applicant for a gun permit prevents obtaining it, they inform the appropriate police authority. However, it should be noted that a party may appeal against such a judgment, which must be submitted in writing. Pursuant to the regulation of Art. 15h, item 2 of the Act on arms and ammunition, the appeal is entitled to the applicant and the voivodship police chief competent for the person's place of residence. An appeal and justification must be lodged within 30 days of the date of delivery of the decision, through the physician or psychologist who issued the decision, to one of the appeal entities, which are:

- voivodship occupational medicine centers, and if the appeal relates to a medical certificate issued in a voivodship occupational medicine center – research institutes in the field of occupational medicine,
- units of the occupational medicine service for medical entities established and appointed by the minister competent for internal affairs,
- medical entities established and designated by the Minister of National Defense.

An appeal against a decision is lodged via a doctor or psychologist to the competent authority, which then passes the appeal together with the examination documentation to the appeal entity within 7 days of receiving the appeal. Examination under the appeal procedure is carried out within 30 days of receipt of the appeal. It is worth pointing out that the deadline specified in Art. 15h, item 5 of the Act of 1999 on weapons and ammunition for testing within 30 days from the date of receipt of the appeal, is not a deadline, but an instructional one, because only the deadlines are considered to be the first appeals or deadlines that the act deems it to be[19]. According to Art. 15h, item 7 of the Act on weapons and ammunition, a medical or psychological certificate issued in the course of an appeal is final. Submission of subsequent judgments is unnecessary and cannot be considered as substantive evidence in the case[20]. Pursuant to Art. 15a, item 1 of the Act, there is an obligation to undergo medical and psychological examinations under the appeal procedure. Failure to comply with this obligation must result in the issuing of a negative decision on the issue of a weapon license. As emphasized by the administrative court, in the case of proceedings initiated upon a request, the party bears the burden of demonstrating the facts from which it derives

[19] Judgment of the Provincial Administrative Court in Warsaw of 26 January 2018, II SA/Wa 538/17, Lex No. 2452171.

[20] Judgment of the Provincial Administrative Court in Warsaw of 28 February 2018, II SA/Wa 1449/17, Lex No. 2477133.

certain legal effects. In the proceedings for issuing a permit for a weapon, the person applying for a permit is obliged to submit to the rigors arising from the act of 1999 on weapons and ammunition, in particular, to appear at the summons of an authorized entity to conduct tests and demonstrate that it is not to the persons mentioned in Art. 15, item 1, points 2–4 of the Act[21].

After submitting the application together with a medical and psychological certificate, as well as after passing the examination, the competent Police authority makes the decision on issuing or refusing to issue a permit authorizing the possession of a weapon, specifying its type. The permit for a weapon is issued by way of an administrative decision, which is one of the forms of administration activity. The administrative decision is therefore a qualified administrative act. Decides the matter as to the substance in whole or in part or otherwise terminates the proceedings in the instance. The procedure is issued, the criteria of correctness and defectiveness and legal effects of the defectiveness are regulated in detail by law[22]. The decision may order, prohibit or allow a specific action or tolerate it, but its essence is always the act of choosing at least between two variants. It should be emphasized that the decision decides on specific interests[23]. The Supreme Administrative Court in a resolution composed of seven judges stated that the decision is considered to be a unilateral decision of the administrative body on the binding consequences of the applicable administrative law norm for an individually specified entity and specific case, undertaken in the sphere of external relations, outside the system of state organs and their subordinate units[24]. The decision to permit or refuse a weapon permit is issued on the basis of the provisions of the Code of Administrative Procedure, therefore it contains the basic elements indicated in Art. 107, § 1 of the Code of Administrative Procedure[25], however, special provisions may also specify other components that should con-

[21] Judgment of the Provincial Administrative Court in Warsaw of 29 May 2017, II SA/Wa 1885/16, Lex No. 2321413.

[22] E. Ura, *Prawo administracyjne*, p. 128.

[23] E. Knosala, *Decyzja w działaniu administracji publicznej*, „Studia Iuridica" 1996, No. 32, p. 140.

[24] Resolution of the Supreme Administrative Court of 12 October 1998, OPS 6/98, ONSA 1999, No. 1, Item 3.

[25] These elements are: a) the designation of a public administration body; b) date of issue; c) designation of the page or pages; d) reference to the legal basis; e) settlement; f) factual and legal justification; g) an instruction as to whether and in what manner an appeal may be lodged against it and about the right to waive the appeal and the consequences of waiving the appeal; h) signature providing the name and job title of the employee of the body authorized to issue the decision, and if the decision was issued in the form of an electronic document – a qualified electronic signature; i) in the case of a decision in respect of which an action may be brought before a common court, an objection to a decision or a complaint to an administrative court – an instruction on the admissibility of bringing an action, an objection to a decision or a complaint and the amount of the fee for an action or an entry on a complaint or an objection from decisions, if they are permanent, or on the basis of calculating a fee or entry of a relative nature, as well as the possibility of a party seeking exemption from costs or granting the right to assistance.

tain the decision (Art. 107, § 2 of the Code of Administrative Procedure). Such a special provision is Art. 12(2) of the Law on Weapons and Ammunition, which requires to specify in the permit 1): the purpose for which the permit was issued, 2) the type of weapon; 3) the number of copies of weapons.

Bibliography

Adamczak S., *Pojęcie broni palnej*, „Problemy Kryminalistyki" 1967, No. 66.

Babiński A., *Udział organów Policji w reglamentacji broni i amunicji* [in:] *Prawo policyjne*, eds. M. Czuryk, M. Karpiuk, J. Kostrubiec, K. Orzeszny, Warszawa 2014.

Góralczyk W., Sawicki S., *Prawo międzynarodowe publiczne w zarysie*, Warszawa 2015,

Hanusek T., *Problemy z bronią palną*, „Gazeta Policyjna" 1998, No. 47.

Knosala E., *Decyzja w działaniu administracji publicznej*, „Studia Iuridica" 1996, No. 32.

Jurgilewicz M., *Rola podmiotów uprawnionych do użycia lub wykorzystania środków przymusu bezpośredniego i broni palnej w ochronie bezpieczeństwa i porządku publicznego*, Siedlce 2017,

Maj S., *Ustawa o broni i amunicji. Komentarz*, Lex/el. 2010.

Rejmaniak R., *Wyrabianie, handel i posiadanie broni palnej oraz amunicji*, Toruń 2017.

Ura E., *Prawo administracyjne*, Warszawa 2015.

Summary

The legal form of the administration's operation is the type of specific activity specified by law, which may be used by the administrative body to settle a specific matter. It is equivalent to the concept of legal action under civil law. One form of administration is the issuing of administrative acts, and the most common and typical form of an administrative act is an administrative decision. This legal form is the issuing or refusal of issuing a weapon license to a police officer.

Keywords: decision, weapon, weapon license, types of weapons

DECYZJA JAKO FORMA PRAWNA WYDANIA POZWOLENIA NA BROŃ FUNKCJONARIUSZOWI POLICJI

Streszczenie

Prawną formą działania administracji jest określony przepisami prawa rodzaj konkretnej czynności, który może być wykorzystany przez organ administracji do załatwienia określonej sprawy. Jest to odpowiednik pojęcia czynności prawnej na gruncie prawa cywilnego. Jedną z form działania administracji jest wydawanie aktów administracyjnych, a najbardziej rozpowszechnioną i typową formą aktu administracyjnego jest decyzja administracyjna. Taką formę prawną przybiera wydawanie lub odmowa wydawania pozwolenia na broń funkcjonariuszowi Policji.

Słowa kluczowe: decyzja, broń, wydawanie pozwolenia na broń, rodzaje broni

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