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ORCID: 0000-0003-2424-8302**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 authorities¹. 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 order². 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 other³. 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 support⁴.

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 manner⁵. Interaction in general sense is identified with positive collaboration, cooperation⁶. 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 field⁷. 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 entities⁸. 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 authorities⁹.

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 security¹⁰. 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 places¹². 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.

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 agreement¹³.

The basic legal act regulating use of the Armed Forces of the Republic of Poland is the Constitution of the Republic of Poland from 1997¹⁴. 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 areas¹⁵. 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 Poland¹⁶, 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.

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 order¹⁷. This Regulation defines, in particular, the conditions and way of use of units and sub-units 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 order¹⁸.

Use of the Polish Armed Forces to support the Police was also provided for in the Act of 10 June 2016 on counter-terrorism activities¹⁹, 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 emergency²¹. 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 Act²², 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 province²³.

Similar solution regarding use of the Polish Armed Forces was introduced in the Act of 18 April 2002 on the state of natural disaster²⁴. 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 extends²⁵.

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 activity²⁶. 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 else²⁷. 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 entities²⁸. 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. Cybułska, *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 Forces³⁰ 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.

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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.

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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

WSPÓLDZIAŁANIE I WSPÓLPRACA 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 słuzenie 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