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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 government¹. 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 ones².

In Art. 1 of the Act on upbringing in sobriety and counteracting alcoholism³ 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. Wlazlak, *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. Płazek, 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 Acts⁴. 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 Violence⁵, the Act of 12 March 2004 on Social Welfare⁶, or Act of 20 June 1997 on Traffic Law⁷.

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 poviats 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 organizations⁸.

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 mentioned⁹. In the doctrine they are referred to as autonomous¹⁰ 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*, „Przeгляд 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 alcohol¹¹.

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 source¹² 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 order¹³. 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 coercive¹⁴ 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 Act¹⁵ 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 space¹⁶. 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 powiat 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, terażniejszość, 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 statutory¹⁷.

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 knowledge¹⁸, 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 appropriate¹⁹. 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 alcoholism²⁰. 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 violence²¹. 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 safety²² 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 alcohol²³ 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 Code²⁴. 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 Offenses²⁵. 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 zone²⁶. 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 vehicle²⁷. 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 dm³.

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. Gluchowski, *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 will²⁸. 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. 40³ 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. 42¹ 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. 40⁴ 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 interests²⁹. 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.

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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