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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 tasks¹. 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 law².

The cooperation of public administration entities as a principle of law, was reflected in the Polish Constitution of 1997³ and its content was developed and specified in legislation⁴. 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 Procedure⁵. 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 situation⁶.

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 relationship⁷. The enforcement relationship occurs when an authorized body, that uses state coercion, initiates an administrative enforcement, which causes specific procedural and administrative effects⁸. 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 Administration⁹. 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 enforcement¹⁰. 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 employees¹¹.

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 Police¹². 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 activities¹³. 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 other¹⁴. Generally speaking, the cooperation is identified with positive cooperation¹⁵. 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 entities¹⁶. 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 occur¹⁷. 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 activities¹⁹. The most common notion of cooperation, emphasises the lack of organizational subordination between the entities aiming at achieving a common goal, as its basic feature²⁰. 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 voluntariness²¹. 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. Stanisław, M. Czuryk, K. Ostaszewski, J. Świącki, 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-Lyszczek, *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 limited²². 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 fields²³.

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 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 party²⁴. 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 out²⁵.

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 activities²⁶.

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 parties²⁷.

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 authorities²⁸.

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 onerous²⁹. 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.

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 activities³⁰. 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 phone³¹.

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 intentional³².

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 services³³. 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 debtor³⁴.

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. Ostojki, *Zmiana tytułu wykonawczego w administracyjnym postępowaniu egzekucyjnym*, „Przegląd Podatkowy” 2019, No. 6, p. 48, <https://sip.lex.pl/#/publication/151350515/ostojki-przemyslaw-zmiana-tytułu-wykonawczego-w-administracyjnym-postępowaniu-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 AP³⁵, and also apply coercive measures specified in the Act of 24 May 2013 on coercive measures and firearms³⁶.

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 law³⁷.

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 AEPA³⁸. As K. Pietrasik rightly points out, this convergence concerns only the form of entitlements and not the circumstances when they can be implemented³⁹. 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 Procedure⁴⁰ 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 coercer⁴¹.

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 policeman⁴².

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 border⁴³; 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 ACMF⁴⁴ 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 firearms⁴⁵. 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 rights⁴⁷.

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.

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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

WSPÓLDZIAŁANIE 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