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## The impact of the rules of administrative enforcement proceedings on the protection of the rights of the obligated in administrative enforcement proceedings

### Abstract

The article attempts to show the impact of the rules of enforcement proceedings in administration on the protection of the rights of the obligated in the administrative enforcement procedure. Of the three groups of rules characteristic to administrative enforcement, the focus was on those contained in the Act on enforcement proceedings in administration. The rules play an important role in the course of enforcement proceedings, especially in relation to the protection of the legal situation of the obligor. They constitute the statutory basis for encroaching on the sphere of rights and freedoms of an individual in accordance with the purpose of enforcement. Attention was also drawn to the role of the debtor as the basic and most important subject of enforcement proceedings in the administration and to the fact that during the enforcement procedure there is interference in the sphere of rights and freedoms of the individual. Forced enforcement may not cause excessive pain to the obligor, which seems particularly important in the context of issues such as rising inflation, the energy crisis or the socio-economic situation caused by the covid-19 pandemic. The article uses research methods such as normative and institutional analysis, the method of analyzing documents and legal acts currently in force.

**Keywords:** principles of enforcement proceedings in administration, administrative enforcement proceedings, administrative enforcement, obligated in enforcement proceedings in administration, protection of individual rights, protection of the rights of the obligated in enforcement proceedings in administration.

## Introduction

This article examines the impact of the rules of enforcement proceedings in administration on the protection of the rights of the obligated in the administrative enforcement procedure<sup>1</sup>. From the three groups of principles characteristic for analyzing administrative enforcement, the focus was on those contained in the Act on enforcement proceedings in administration<sup>2</sup>.

As part of the implementation of the research objective, key concepts for these considerations should be defined. State coercion<sup>3</sup> it is an inseparable element of state power (empire), whose role is to guarantee the effectiveness of its decisions<sup>4</sup>. Its essence is to lead to the implementation of specific behaviors, which should be performed voluntarily in the first place<sup>5</sup>. Both the jurisprudence and the doctrine emphasize the fact that for the effective implementation of the tasks assigned to the public administration, it is necessary to guarantee the performance of public law obligations (social and public interest) - legal certainty<sup>6</sup>. One of the dimensions of administrative coercion is administrative execution<sup>7</sup>.

<sup>1</sup> It is impossible in the article to present all the complexities of the analyzed issue, therefore it is limited to the most important threads. The abbreviation e.p.a. was adopted for the designation of enforcement proceedings in administration. The article uses research methods such as: normative and institutional analysis, the method of analyzing documents and legal acts currently in force. The methods extensively discussed: A. Pieniążek, M. Stefaniuk, *Socjologia prawa. Zarys wykładu*, Warszawa 2021.

<sup>2</sup> T. Jędrzejewski, M. Masternak, P. Rączka, *Administracyjne postępowanie egzekucyjne*, Toruń 2013, p. 45, P. Przybysz, *Postępowanie egzekucyjne w administracji. Komentarz*, Warszawa 2021, p. 35, W. Grzeškiewicz, *Egzekucja administracyjna – teoria i praktyka. Z orzecnictwem sądownoadministracyjnym*, Warszawa 2006, pp. 42-80.

<sup>3</sup> See more: L. Klat-Wertelecka, *Niedopuszczalność egzekucji administracyjnej*, Wrocław 2009, s. 21 et seq., J. Jendrośka, *Przymus administracyjny*, [in:] *Z problematyki prawa administracyjnego i nauki administracji*, Z. Janku, M. Szewczyk, M. Waligórski, K. Wojtczak, K. Ziemiński (eds.), Poznań 1999, p. 144 et seq., J. Radwanowicz, *Istota i znaczenie pojęcia przymusu administracyjnego*, [in:] Zimmerman J., *Koncepcja systemu prawa administracyjnego. Zjazd Katedr Prawa Administracyjnego i Postępowania Administracyjnego, Zakopane 24–27 września 2006 r.*, p. 131 et seq.

<sup>4</sup> Compare J. Radwanowicz, A. Breczko, *Ochrona jednostki przed stosowaniem przymusu administracyjnego w świetle Konstytucji RP*, [in:] *Jednostka w demokratycznym państwie prawa*, J. Filipek (ed.), Bielsko-Biała 2003. p. 518.

<sup>5</sup> See: D.R. Kijowski, J. Radwanowicz-Wanczewska, *Pojęcie, przedmiot i podstawy postępowania egzekucyjnego w administracji i egzekucji administracyjnej*, [in:] *System Prawa Administracyjnego Procesowego*, t. 3, cz. 1: D.R. Kijowski (ed.), *Pojęcie, przedmiot i podstawy postępowania egzekucyjnego w administracji i egzekucji administracyjnej*, Warszawa 2020, p. 56.

<sup>6</sup> See: P. Szreniawski, *Etyczne aspekty egzekucji administracyjnej*, [in:] J. Niczyporuk, S. Fundowicz, J. Radwanowicz (eds.), *System Egzekucji Administracji*, Warszawa 2004, p. 45; Wyrok NSA z 13.10.2005 r., II FSK 642/05.

<sup>7</sup> A. Cudak, *Zarzut w sprawie egzekucji administracyjnej*, Warszawa 2021, p. 16.

It is worth paying attention to the relationship between administrative enforcement and enforcement proceedings in administration<sup>8</sup>. These terms are often misinterpreted.

In the judgment of 26 March 2009, the Supreme Administrative Court indicated that these are two separate concepts, and the relationship between them is not that administrative enforcement is always performed as part of enforcement proceedings<sup>9</sup>. The use of state coercion as part of this enforcement is the performance of enforcement activities, including the actions of the enforcement authority aimed at applying or implementing an enforcement measure<sup>10</sup>. The latter, in turn, is one of the forms of state coercion, used to bring about the implementation of the obligations subject to administrative enforcement<sup>11</sup>, its institutionalized form, applied according to a specific procedure, directed right to the performance of an obligation<sup>12</sup>. Implementation of claims arising from public subjective rights of the state is guaranteed by enforcement measures provided for in e. p. a.<sup>13</sup>

It should also be pointed out to the special role of the obligated party under e.p.a. It is its basic, key and most important subject<sup>14</sup>. In relation to the obliged entity, which is a passive entity, security and enforcement measures are applied<sup>15</sup>. Two types of obligations were subject to administrative enforcement<sup>16</sup> and both of these categories are equally important from the point of view of the proper functioning of the state and its finances. Obligations are satisfied from the property belonging to the debtor (pecuniary obligations) or as a result of forcing the debtor to behave in accordance with the content of their obligation by means of actions directed to their person or property (non-pecuniary obligations)<sup>17</sup>.

This is a particularly sensitive matter. In this procedure, the interests of various entities meet. It should be remembered that on one side there is the public inter-

<sup>8</sup> The equal sign is often wrongly placed between them. Enforcement proceedings indicate a procedural aspect. The differences are also indicated by the people quoted below T. Góra, M. Romańska, W. Grześkiewicz, P. Przybysz.

<sup>9</sup> Wyrok NSA z dnia 26.03.2009 r., II FSK 1462/08.

<sup>10</sup> M. Masternak, *Zagadnienia ogólne*, [in:] T. Jędrzejewski, M. Masternak, P. Rączka, *Administracyjne postępowanie...*, p.27

<sup>11</sup> R. Hauser, *Ochrona obywatela w postępowaniu egzekucyjnym w administracji*, Poznań 1988, p. 60.

<sup>12</sup> E. Bojanowski, *Wykonanie zastępcze w egzekucji administracyjnej*, Warszawa 1975, p. 34.

<sup>13</sup> W. Jakimowicz, *Publiczne prawa podmiotowe państwa*, Kraków 2002, p. 59.

<sup>14</sup> Without them, administrative enforcement cannot take place, it is initiated by them. T. Góra, *Postępowanie egzekucyjne w administracji*, Warszawa 2022, p. 58.

<sup>15</sup> *Postępowanie egzekucyjne w administracji. Komentarz*, R. Hauser, M. Wierzbowski (eds.), Warszawa 2021.

<sup>16</sup> Monetary and non-pecuniary obligations.

<sup>17</sup> The most extensive group of obligations subject to administrative enforcement is pecuniary. M. Romańska, *Postępowanie egzekucyjne i zabezpieczające w administracji*, Warszawa 2021.

est. It is therefore about a “golden balance” between such values as the effectiveness of enforcement and ensuring adequate protection for the individual<sup>18</sup>.

## 1. State coercion and protection of human rights

Errors may occur in any proceeding before state authorities. This is particularly important in the context of the competences of administrative enforcement authorities. The more complex and painful they are, the greater the risk of threat or violation of civil rights and freedoms in connection with the procedural activities undertaken by them<sup>19</sup>.

In the context of protecting the rights of the obligated party, the provisions from which the e.p.a. principles are derived seem to play an important role. As stated by the Provincial Administrative Court in Gorzów Wielkopolski in its judgment of 30 October 2008,<sup>20</sup> due to the fact that any use of forced enforcement measures constitutes a profound interference in the sphere of fundamental civil rights and obligations, it is necessary, however, to ensure and respect in these proceedings the rules that are indispensably connected with the sphere of these rights and obligations.

The Republic of Poland as a democratic state ruled by law is based on the primacy of law and respect for the rights and freedoms of citizens, thus it is assumed that public administration is obliged to act only on the basis and within the limits of the law. This law implements the values characteristic of this state model, also in the socio-economic dimension (social market economy). In addition, it is obliged to respect the rights and freedoms of individuals, and its actions should be subject to judicial review<sup>21</sup>. An extremely thin border separates e.p.a. from repressive actions that may cause too far-reaching discomfort to the obliged person<sup>22</sup>. Especially since direct coercion is used in this execution, which is the most burdensome and therefore final and exceptional measure<sup>23</sup>.

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<sup>18</sup> The doctrine indicates that when using enforcement compulsion, it is always about protecting the public interest and ensuring the existence of a lawful state. *Postępowanie egzekucyjne w administracji. Komentarz*, R. Hauser, M. Wierzbowski, 2021, C.H. Beck, art. 1, Nb 1, Legalis, J. Wyporska-Frankiewicz, *Gwarancje ochrony zobowiązanego w egzekucji administracyjnej obowiązków niepieniężnych*, Warszawa 2019, p. 340.

<sup>19</sup> M. Romańska, *Postępowanie egzekucyjne...*, p. 225.

<sup>20</sup> Wyrok WSA w Gorzowie Wielkopolskim z 30.10.2008 r., I SA/Go 678/08.

<sup>21</sup> In the Polish model of e.p.a. the public administration plays a dominant role. The principle of proportionality refers to the scope and limits of the application of the law, as it serves to limit to necessary the limits of the nuisance of administrative interference in the sphere of individual rights - Art. 31 section 3 of the Constitution of the Republic of Poland of 1997. M. Romańska, *Postępowanie egzekucyjne...*, p. 123, 170.

<sup>22</sup> M. Romańska, [in:] R. Hauser, M. Wierzbowski (eds.), *Postępowanie egzekucyjne w administracji*, Warszawa 2021, p. 24.

<sup>23</sup> Direct coercion may be used only by some authorities involved in taking actions in enforcement proceedings, and its acceptable forms are specified in the Act of 24 May 2013 on direct coer-

Freedoms and rights do not belong to categories that can be expressed in simple formulas, due to the unambiguous character of the concepts, which changes along with the development of knowledge about man, social, moral and cultural development of humanity<sup>24</sup>. Human rights are universal, inherent and inalienable. They operate mainly vertically, and it is this relationship that is the subject of this article.

The considerations undertaken in the article will begin with a reflection on respecting the dignity of the obligated party as a source of freedom and human and civil rights<sup>25</sup>. Dignity is the basis of human rights, for which positive law becomes the objective law of their protection<sup>26</sup>. Respect for human dignity or freedom is an element of respect for both fundamental rights and democracy, as is equality (Article 32(1) of the Constitution of the Republic of Poland)<sup>27</sup>. In addition, particular attention should be paid to the protection of freedom and security<sup>28</sup>, right to privacy<sup>29</sup>,

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cion measures and firearms. M. Romańska, *Postępowanie egzekucyjne...*, p. 210, M. Staniszewski, *Egzekucja administracyjna obowiązków pieniężnych. Postępowanie egzekucyjne. Komentarz*, R. Hausner, M. Wierzbowski, C. H. Beck, Warszawa 2021, p. 47.

<sup>24</sup> D. Fleszer, *Realizacja zadań publicznych przez organizacje pozarządowe, Studium administracyjnoprawne*, Sosnowiec 2018, p. 24.

<sup>25</sup> Absolute protection of dignity. Judgment of the Constitutional Tribunal of 5 March 2003, K/01, A. Ciżyńska, J. Karakulski, K. Kos, J. Pylko, *Prawo konstytucyjne wraz z orzecnictwem Trybunału Konstytucyjnego*, Warszawa 2017, p. 69; *Prawa człowieka. Zarys wykładu*, J. Hołda, Z. Hołda, D. Ostrowska, J. A. Rybczyńska, *Prawa człowieka. Zarys wykładu*, Warszawa 2014, p. 32.

<sup>26</sup> R. Andrzejczuk, *Prawa człowieka w świetle uwarunkowań kulturowych i prawnych*, Lublin 2011.

<sup>27</sup> J. Barcz, M. Górka, J. Wyzomska, *Instytucje i prawo Unii Europejskiej*, Warszawa 2020, p. 143.

<sup>28</sup> According to Art. 31 section 1, human freedom is subject to legal protection, which is specified in Art. 41 of the Constitution, which in section 1, sentence 1 states that personal inviolability and personal freedom shall be ensured to everyone. Deprivation or restriction of liberty may only take place on the terms and in the manner specified by law. The International Civil and Political Covenant contains guarantees of personal freedom and security - art. 9. European Convention for the Protection of Human Rights and Fundamental Freedoms art. 5 sec. 1, the right to respect for private and family life - Article 8. M. Wiącek, W. Brzozowski, A. Krzywoń, *Prawa człowieka*, Warszawa 2021, p. 150, Z. Kwiasowski, *Prawo do wolności i bezpieczeństwa osobistego*, [in:] *Prawa człowieka. Wybrane zagadnienia i problemy*, L. Koba, W. Wacławczyk (eds.), Warszawa 2009, p. 207.

<sup>29</sup> This law is extremely universal and capacious. The essence of the issue is also expressed in the Universal Declaration of Human Rights in Art. 12. Very similarly, also in the form of a prohibition of interference, this right is included in Art. 17 ICCPR, Art. 8 sec. 2 ECHR. The legal protection of private life is expressed in art. 47 of the Polish Constitution. An element of this right, which is the idea of the inviolability of the 'household' is visible in art. 50 of the Constitution of 1997. The inviolability of the home imposes mainly negative obligations on the state - non-interference in the sphere of domestic privacy. Conducting a house search is admissible, but requires justification (imitation clause). The principle of proportionality is of key importance here, providing guarantees against abuses of power, e.g. against taking actions by officers that go beyond what is necessary. The value of the inviolability of the apartment requires special care from the state services when performing any activities. It also appears in the catalog of personal rights (Article 23 of the Civil Code), and disturbing the home peace is a crime (Article 193 of the Civil Code). M. Wiącek, W. Brzozowski, A. Krzywoń, *Prawa...*, pp. 185-210, M. Mączyński, *Prawo do prywatności*, [in:] *Prawa człowieka. Wybrane...*, pp. 225-226, L. Kaczkowski, *Nienaruszalność mieszkania*, [in:] M. Jabłoński (ed.), *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*, Wrocław 2014, p. 209, Konstytucja RP z 1997

the right to private property<sup>30</sup>, the right to social protection, including the right to social assistance (selected social rights)<sup>31</sup>.

The guarantees of protection of individual rights contained in the principles analyzed below are particularly important in a situation where, as part of the provided procedures, there is a “far-reaching” (but lawful) interference of public authorities in the indicated legal areas<sup>32</sup>. This is the case in enforcement proceedings. At this point, attention should be paid to the provisions of the Enforcement Act regarding: seizure of movable property (Article 97)<sup>33</sup>, sale of movables (Articles 104-105), as part of real estate execution<sup>34</sup> its seizure (Article 110c)<sup>35</sup>, sale by public auction (Article 110 of the Civil Code), collection of a movable item (Articles 136-140)<sup>36</sup>, confiscation of real estate, emptying premises and other rooms (Art. 141-147), direct coercion Art. 148-153<sup>37</sup> opening of premises and searches (Article 47), including clothing (Article 48).

The basic principle of enforcement proceedings is that the debtor is liable for the obligation to be performed with all their property<sup>38</sup>. Enforcement authority, by dealing with a claim or other property right or by occupying movable

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roku, P. Sarnecki, *Prawo konstytucyjne RP*, Warszawa 2005, p. 113, Konwencja o ochronie praw człowieka i podstawowych wolności sporządzona w Rzymie dnia 4 listopada 1950 r., zmieniona następnie Protokołami nr 3, 5 i 8 oraz uzupełniona Protokołem nr 2.

<sup>30</sup> In fact, it bears all the characteristics of individual freedom. Z. Szafranski, A. Szafranski, *Publiczne prawo gospodarcze*, Warszawa 2018, p. 77.

<sup>31</sup> It is an element of the social market economy (Articles 20 and 21 of the Constitution of the Republic of Poland). The use of the adjective ‘social’ for a market economy means that the state may, in certain circumstances, correct the negative effects of the functioning of free market mechanisms. International Covenant on Economic, Social and Cultural Rights opened for signature in New York on 19 December 1966 (Journal of Laws 1977 No. 38, item 169) in art. 9 provides for social security, an adequate standard of living. Similarly, the European Social Charter “All workers and their dependents have the right to social security.” Extensively analyzed laws are presented by: M. Wiącek, W. Brzozowski, A. Krzywoń, *Prawa...*, p. 310, Europejska Karta Społeczna z dnia 18 października 1961 r. (Dz. U. 1999 Nr 8, poz. 67).

<sup>32</sup> For example, the principle of legality.

<sup>33</sup> In the Act - Section 1. Seizure.

<sup>34</sup> The Act does not contain a separate definition of real estate, therefore this concept should be understood in the manner specified in Art. 46 § of the Civil Code. P. Przybysz, *Postępowanie...*, p. 51.

<sup>35</sup> Seizure of real estate in administrative enforcement proceedings is aimed at preventing the obligated party from removing the real estate from execution by e.g. selling it. See more: W. Trybka, *Egzekucja z prawa własności nieruchomości w administracyjnym postępowaniu egzekucyjnym (wybrane zagadnienia)*, [in:] B. Stępień-Załuska, *Konstytucyjne prawo własności – sposoby naruszenia i środki ochrony*, Warszawa 2021, pp. 3–4, 5.

<sup>36</sup> This measure is applied both when the movable is in the possession of the obligor and another person. M. Staniszewski, *Egzekucja...*, p. 46.

<sup>37</sup> Ustawa z dnia 17 czerwca 1966 r. o postępowaniu egzekucyjnym w administracji, Dz. U. 1966 Nr 24 poz. 151 ze zm..

<sup>38</sup> *Postępowanie egzekucyjne w administracji. Komentarz*, R. Hauser, M. Wierzbowski (eds.), Warszawa 2021.

property, enters into the rights and obligations of the principal.<sup>39</sup> By seizure of enforcement is understood the action of the enforcement authority, as a result of which the enforcement authority acquires the right to dispose of the asset of the principal to the extent necessary to perform the obligation covered by the enforcement title<sup>40</sup>. The consequence of seizure in the course of the enforcement of things or property rights is their sale, but the enforcement authority is entitled to make other, in addition to the sale, disposal activities, if they serve to preserve the value of the seized things or rights<sup>41</sup>.

Regardless of the wording of Art. 1a point 19 e.p.a. the effects of enforcement seizure are not limited only to the acquisition by the enforcement authority of the power to dispose of the attached right or claim, but are also associated with the creation of many restrictions on the part of the obligated party as regards the use of the subject of attachment, and the imposition of a number of obligations on the debtors of the attached claims (differing from each other in executions by various means). Non-pecuniary obligations subject to administrative enforcement are very diverse and, as a rule, much more burdensome for the obligated than pecuniary obligations<sup>42</sup>. These are particularly sensitive areas of freedom and human rights. P. Przybysz notes that direct coercion and measures to secure non-pecuniary obligations have been defined in the Act in too general a manner. This may make it difficult to assess the lawfulness of their use by enforcement authorities. Such an assessment must therefore be made taking into account the provisions of the Constitution of the Republic of Poland and other general principles of enforcement proceedings, in particular the principle of purposefulness<sup>43</sup>.

## **2. Principles of enforcement proceedings in administration and their impact on the protection of the rights of the obligated**

In the article, the principles of e.p.a. are crucial for the conducted research<sup>44</sup>. The Enforcement Act does not standardize nomenclature, does not introduce a single classification (typology of rules), or a closed catalogue. The principles of enforcement proceedings result from the entirety of regulations applicable to

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<sup>39</sup> P. Przybysz, *Postępowanie...*, p. 493.

<sup>40</sup> See: art.1 a pkt 18 Ustawa z dnia 17 czerwca 1966 r. o postępowaniu egzekucyjnym w administracji, Dz. U. 1966 Nr 24 poz. 151 ze zm.

<sup>41</sup> Seized movable assets of the principal may not be used for business by the enforcement authority or persons acting on their behalf. *Ibidem*.

<sup>42</sup> *Ibidem*, p. 92.

<sup>43</sup> P. Przybysz, *Postępowanie...*, p. 36, 100.

<sup>44</sup> Not to be confused with Chapter 3, Enforcement Rules. M. Romańska, *Postępowanie...*, p. 82.

enforcement proceedings in administration and the standards of general administrative procedure<sup>45</sup>. It should be emphasized that these principles constitute legally binding standards, and the degree of their generality varies<sup>46</sup>. A rich catalog of principles has been systematized in the article on the basis of the literature on the subject.

The protection of the rights of the obligated co-exists in a substantive connection with such principles as: the principle of legality<sup>47</sup>, which applies only to the application of enforcement measures provided for in the act, or in special acts (Article 7 § 1 of the e.p.a. Act, Article 1 of the e.p.a Act). In addition, these measures must be applied in accordance with the law.<sup>48</sup> Enforcement measures are defined in Art. 1a point 12 of the e.p.a. by enumerating and dividing them. The use of other measures, regardless of their effectiveness, is unacceptable and will result in the repeal of the actions taken at each stage of the enforcement proceedings.<sup>49</sup> This is an expression of the constitutional principle of the rule of law (Article 7 of the Constitution of the Republic of Poland<sup>50</sup>), which means the observance of the law in the sphere of its creation and application<sup>51</sup>. The guarantees of its observance result from the catalog of means of appeal created by the legislator, with the use of which authorized entities (primarily the obligated) may demand that enforcement actions taken in violation of the law be revoked<sup>52</sup>.

Together, the principle of applying measures leading directly to the performance of obligations and the principle of applying measures least onerous for the obligated person can be analyzed (Article 7 § 2)<sup>53</sup>. In the first case, the enforcement authority applies enforcement measures that lead directly to the performance of the obligation. Hence, it is called the principle of rational action or

<sup>45</sup> Wyrok WSA w Warszawie z 21.8.2008 r., I SAB/Wa 73/08.

<sup>46</sup> W. Piątek, A. Skoczylas, *Zasady postępowania egzekucyjnego*, [in:] R. Hauser, Z. Niewiadomski, A. Wróbel (eds.), *System prawa administracyjnego*, t. 9: *Prawo procesowe administracyjne*, Warszawa 2020, Nb 225–236, Legalis.

<sup>47</sup> Otherwise, the obligation to carry out executions. T. Jędrzejewski, M. Masternak, P. Rączka, p. 46, T. Góra, *Postępowanie egzekucyjne...*, p. 24.

<sup>48</sup> P. Przybyś, *Postępowanie...*, p. 35, T. Jędrzejewski, M. Masternak, P. Rączka, *Administracyjne...*, p. 46, T. Góra, *Postępowanie egzekucyjne...*, p. 24.

<sup>49</sup> W. Grześkiewicz, *Egzekucja administracyjna...*, p. 54.

<sup>50</sup> P. Przybyś, *Postępowanie...*, p. 100, Konstytucja RP z 1997 . Dz. U. 1997 Nr 78 poz. 483 ze zm.

<sup>51</sup> A. Ciżyńska, *Prawo...*, p. 45, 50.

<sup>52</sup> This constitutes the basis for bringing charges (Article 33 § 1 point 6 of the Act on enforcement proceedings in administration), and consequently discontinuation of the proceedings (Article 59 § 1 point 7 of the Act on enforcement proceedings in administration). Also important in this respect are the provisions for damages, which are the basis for liability for damages for damage caused in connection with unlawful actions in enforcement proceedings. *Postępowanie egzekucyjne w administracji. Komentarz*, R. Hauser, M. Wierzbowski (eds.), Warszawa 2021, M. Romańska, *Postępowanie...*, pp. 82–83.

<sup>53</sup> The principle of applying the most lenient measure is functionally and juridically convergent with the principle laid down in Art. 13 of the Act on enforcement proceedings in administration. W. Grześkiewicz, *Egzekucja...*, p. 56.

purposefulness, which is discussed in more detail later in the article. In the second case, out of several measures, those with the least burden for the obligor are selected. This is the basis of the principle of the mildest enforcement measure<sup>54</sup>. The specificity of enforcement proceedings makes the use of any enforcement measure an inconvenience for the obligated party. Provisions of the e.p.a. however, they do not specify which of the measures are more or less onerous<sup>55</sup>. Nowadays, it is assumed that the order in which enforcement measures are listed by the legislator is not the same as their hierarchy<sup>56</sup>. The situations in which the obliged persons find themselves are often very diverse, which should be taken into account in a special way<sup>57</sup>. When choosing an appropriate enforcement measure, the authority should be guided not only by its least discomfort, but also by the effectiveness of the proceedings, which is extremely difficult<sup>58</sup>. Enforcement proceedings are not intended to punish or repress the debtor. However, the thesis that enforcement against money is the least onerous measure and does not require excessive expenditure on the part of the enforcement authority (although its effectiveness changes during the period of non-cash settlements) is still justified, and enforcement against real estate is the most onerous measure. However, it should now be assumed that the legislator, when enumerating the enforcement measures, was also largely guided by their generic similarity. Therefore, the assessment of the severity of enforcement measures cannot be based solely on the criterion of the order in which they are listed in the act.<sup>59</sup> The enforcement authority assesses which enforcement measure is the mildest and most expedient. It should each time take into account the subject and scope as well as the nature of the imposed obligation, as well as take into account the purposefulness and nuisance for the obligated party<sup>60</sup>. The purpose of the procedure plays an important role here<sup>61</sup>.

Conducting enforcement in the least onerous way for the obligated person manifests itself primarily in:

- prohibition of performing executions on non-working days and at night, unless the purpose of the execution requires it (Article 52(1) of the e.p.a. Act) - consent of the executor<sup>62</sup>,

<sup>54</sup> *Postępowanie egzekucyjne w administracji. Komentarz*, R. Hauser, M. Wierzbowski (eds.), Warszawa 2021; wyrok WSA w Kielcach z 5.2.2009 r., II SA/Ke 6/09.

<sup>55</sup> Wyrok NSA z 10.6.2021 r., FSK 3610/21, T. Góra, *Egzekucja...*, p. 32.

<sup>56</sup> *Postępowanie egzekucyjne w administracji. Komentarz*, R. Hauser, M. Wierzbowski (eds.), Warszawa 2021.

<sup>57</sup> *Ibidem*.

<sup>58</sup> Wyrok NSA z 2.03.2021 r., III FSK 2322/21, T. Góra, *Egzekucja...*, p. 134.

<sup>59</sup> P. Przybysz, *Postępowanie...*, p. 102, 522.

<sup>60</sup> In each case, the enforcement authority is obliged to explain in an objective way the legitimacy of applying a specific enforcement measure. T. Góra, *Egzekucja...*, pp. 29- 34.

<sup>61</sup> *Postępowanie egzekucyjne w administracji. Komentarz*, R. Hauser, M. Wierzbowski (eds.), Warszawa 2021.

<sup>62</sup> The enforcement authority independently assesses the desirability of carrying out executions on non-working days and at night.

- the obligation to search people only by a person of the same sex as the searched person,
- the obligation to search items in accordance with the purpose of this activity, with moderation and respect for the dignity of the persons concerned and without causing unnecessary damage and discomfort (Article 49a of the e.p.a. Act) - direct reference to the dignity of the human person<sup>63</sup>.

In the enforcement of non-pecuniary obligations (pursuant to Article 47 § 1 of the e.p.a. Act), the enforcement authority may order the opening of the means of transport of the obligated party, etc., only if the purpose of the execution conducted on the handover of the thing requires it<sup>64</sup>. Enforcement is generally troublesome, yet the executor (enforcement authority) is obliged to limit it to a minimum. On the other hand, the legislator grants special powers to the executor in the event that the obligated person or another person would like to prevent or delay the effective execution of the enforcement through their actions. An example is the executor's order to expel from the obligated person's apartment any person, including the obligated person, who, by their behavior, prevents effective enforcement<sup>65</sup>.

The key, "one of the most important" principles linking the above provisions is the principle of purposefulness, as the aim of administrative enforcement is always at the center of consideration (bringing to the performance of the enforced obligation, i.e. making the obligor behave in a manner consistent with the content of the obligation imposed on them<sup>66</sup>). In addition, it is considered the most important principle of enforcement proceedings<sup>67</sup>. Nie została skodyfikowana w konkretnym przepisie, a wyprowadzana jest z całokształtu uregulowań ustawy egzekucyjnej<sup>68</sup>. It is justified by other rules of enforcement proceedings<sup>69</sup>. The imperative not to cause unnecessary discomfort to the obliged per-

<sup>63</sup> M. Góra, *Egzekucja...*, p. 29, M. Romańska, *Postępowanie...*, p. 107.

<sup>64</sup> The justification for such actions may be, for example, a situation where the obliged person does not respond to the summons of the enforcement authority, persistently evades performing the obligation and voluntarily does not want to let the enforcer into the apartment. The actions of the enforcement authority are a kind of revision. M. Staniszewski refers to the judgment of Provincial Administrative Court in Gdańsk of 15 September 1999, ref. no. I SA/Gd 1382/97, M. Staniszewski, *Egzekucja...*, pp. 39-40.

<sup>65</sup> M. Staniszewski, *Egzekucja...*, pp. 40 -41.

<sup>66</sup> P. Przybysz, *Postępowanie...*, p. 36.

<sup>67</sup> See more: M. Masternak, *Zasady postępowania egzekucyjnego*, [in: ] T. Jędrzejewski, M. Masternak, P. Rączka, *Administracyjne postępowanie...*, Toruń 2013, p. 47, W. Piątek, A. Skoczylas, *Zasady postępowania egzekucyjnego*, [in:] R. Hauser, Z. Niewiadomski, A. Wróbel (eds.), *System prawa administracyjnego*, t. 9: *Prawo procesowe administracyjne*, Warszawa 2020.

<sup>68</sup> See: M. Masternak, *Zasady postępowania...*, [in:] T. Jędrzejewski, M. Masternak, P. Rączka, *Administracyjne postępowanie egzekucyjne*, Toruń 2013, p. 47.

<sup>69</sup> See: R. Hauser, Z. Leoński, *Egzekucja administracyjna. Komentarz do ustawy o postępowaniu egzekucyjnym w administracji*, Warszawa 1996, p. 124.

son in the implementation of the coercion results from it<sup>70</sup>. The essence of this principle boils down to the fact that the priority objective of enforcement proceedings is to bring about the fulfillment of obligations incumbent on the obligor<sup>71</sup>. The measure used is to be adequate to the obligation subject to enforcement and to enable its performance in a direct manner, but not by exerting pressure on the obligor<sup>72</sup>.

In the context of respecting the dignity of the obligated person in the social dimension, the principle of respecting the subsistence minimum is of fundamental importance - (Articles 8-10 and 13, Article 96g § 3 of the e.p.a. Act)<sup>73</sup>. It can be considered in the context of the economic and social policy of the state. As stipulated in Art. 2 of the Constitution, the Republic of Poland is a democratic state ruled by law implementing the principles of social justice (social market economy)<sup>74</sup>.

It contains an order addressed to state authorities to strive to maintain balance in social relations and refrain from creating unjustified, unsupported by objective requirements and criteria of privileges for selected groups of citizens (e.g. judgment of the Constitutional Tribunal of 19 December 2012, K 9/12<sup>75</sup>). It is used primarily in the enforcement of monetary obligations. Its introduction was based on the position that the enforcement of the pecuniary obligation should not lead to the deprivation of the obligated person and their dependents from the basics of existence (the indicated minimum). It means that the obliged person cannot be deprived of their livelihood as a result of execution<sup>76</sup>. As a consequence, these provisions apply only to obligated persons who are natural persons<sup>77</sup>. The Act specifies monetary amounts and lists items that are not subject to enforcement, thus guaranteeing that the obligated person can support himself without having to use social assistance funds<sup>78</sup>. It is also, in a way,

<sup>70</sup> Wyrok WSA w Gorzowie Wielkopolskim z 30.10.2008 r., I SA/Go 678/08.

<sup>71</sup> E. Ochendowski, *Postępowanie administracyjne i postępowanie przed sądem administracyjnym. Wybór orzecznictwa*, Toruń 1996, s. 158.

<sup>72</sup> M. Góra, *Egzekucja...*, p. 25.

<sup>73</sup> For more on the principle of respecting the subsistence minimum, see among others B. Żmuda, *Poszanowanie minimum egzystencji w postępowaniu egzekucyjnym w administracji*, „Miscellanea Oeconomicae. Studia i materiały” 2018, nr 2.

<sup>74</sup> The model of the social state. Most often, this principle is referred to in relation to social rights, it also sets the direction for the legislator to establish norms in the field of shaping economic and social relations and has special connections with the principle of equality and dignity. A. Ciżyńska, *Prawo konstytucyjne...*, p. 35.

<sup>75</sup> M. Wiącek, W. Brzozowski, A. Krzywoń, *Prawa...*, p. 284.

<sup>76</sup> From the essence of the principle of respecting the subsistence minimum, it follows that the catalog of things and rights subject to exclusion from enforcement serves to protect the obligated against seizure of property, which should guarantee the obligated minimum subsistence. See: Wyrok WSA w Białymstoku z 28.5.2008 r., I SA/Bk 88/08.

<sup>77</sup> P. Przybysz, *Postępowanie...*, p. 108.

<sup>78</sup> M. Romańska, *Postępowanie...*, p. 94

an expression of the principle of thriftiness in the field of state finances. In addition, certain types of items that are necessary for leading a dignified life by the obligated person and their relatives are excluded from execution. Therefore, it should be stated that the principle of respecting the subsistence minimum has transformed into the principle of respecting the dignity of the obligated person - the material conditions of human existence<sup>79</sup>.

Due to the dynamically developing market economy, it seems anachronistic in some places. Apart from a very detailed analysis of this matter, it is worth pointing out that:

- regulations often do not correspond to the contemporary socio-economic situation, point 6 indicates the amount that is not subject to enforcement in the amount of PLN 760 (since 2003), fuel issues (inflation, Covid-19 issues),
- “necessary items” (functions, not material value) for the obliged person should always be related to the current socio-economic conditions<sup>80</sup>,
- the provisions strike with excessive casuistry, e.g. the exclusion in Art. 8 § 1 point 3 (one cow may not meet the nutritional needs of the obligor and his family members),
- tools necessary for the person obliged to work for money “excluding the means of transport”<sup>81</sup>.

Apart from objective exclusions, the legislator has provided for limitations in enforcement<sup>82</sup>. They are a partial exemption from enforcement of assets, receivables and other property rights. For example, pursuant to Art. 9 paragraph 1 of the e.p.a. remuneration in an employment relationship is subject to enforcement to the extent specified in the provisions of the Labor Code (main source of income)<sup>83</sup>. Objective exclusions and limitations are closed<sup>84</sup>.

The principle of economic enforcement (Article 8 § 1 point 9, or Article 97 § 5 of the e.p.a., Art. 81 and Art. 102 § 1 of the e.p.a.) is nowadays extremely im-

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<sup>79</sup> P. Przybysz, *Postępowanie...*, p. 109, W. Brzozowski, *Prawa...*, pp. 123-124.

<sup>80</sup> The enforcement authority should each time examine the factual relationship in which the obliged lives, taking into account their profession, family status, the needs of them and members of their family and other individual circumstances. The moment of seizure is decisive for assessing the necessity of objects. The room segment and the fridge are not items that are not subject to administrative enforcement. *Postępowanie egzekucyjne w administracji. Komentarz*, R. Hauser, M. Wierzbowski (eds.), Warszawa 2021, OZ w Łodzi z 18.12.1996 r., SA/Łd 2983/95, P. Przybysz, *Postępowanie...*, p. 110.

<sup>81</sup> *Postępowanie egzekucyjne w administracji. Komentarz*, R. Hauser, M. Wierzbowski (eds.), Warszawa 2021.

<sup>82</sup> There are also subjective restrictions – Art. 14 of the Act on enforcement proceedings in administration. They are not related to the subsistence minimum.

<sup>83</sup> Deductions are made in the order specified in paragraph 1. M. Góra, *Egzekucja...*, p. 77. M. Romańska, *Postępowanie...*, pp. 95–96.

<sup>84</sup> It is postulated that the aforementioned principle should be extended to business entities in order to ensure their effective operation on the market. M. Góra, *Egzekucja...*, p. 80, J. Wyporska-Frankiewicz, *Gwarancje ochrony...*, p. 348.

portant<sup>85</sup> from two perspectives: the socio-economic interest of the state and its finances and protection of the obligated's rights indicated above. Its validity is expressed, among other things, in the assumption of the legislator that enforcement proceedings should not be initiated if it does not promise that the pecuniary obligation will be satisfied to any extent. It should be recognized that enforcement proceedings would be futile and unreasonable from the point of view of rational management of public expenditure in the event of its initiation, when the obliged person does not have sufficient assets to cover the enforcement costs<sup>86</sup>.

On the other hand, the assumption of the need to act economically in enforcement proceedings is also implemented by the legislator in the framework of the regulation, which defines the relationship between the parties to the proceedings and third parties who have to perform certain procedural tasks important for the course of the proceedings, namely the caretaker, administrator<sup>87</sup>. It is therefore an over-execution<sup>88</sup>. Pursuant to it, the authority should conduct the proceedings in such a way as to achieve the purpose of enforcement in the least costly way for the obligated party. This principle is implemented by many detailed provisions of the Enforcement Act, e.g. Art. 8 § 1 point 9, Art. 97 § 5, Art. 102 § 1, Art. 103 § 2, Art. 131 and Art. 168 b of the e.p.a.<sup>89</sup>.

## Summary

J. Wyporska Frankiewicz emphasizes that the legal protection of the obliged party must be real and not apparent<sup>90</sup>. The rules play an important role in the course of enforcement proceedings, especially in relation to the protection of the legal situation of the obligor. The principles provide a statutory basis for encroaching on the sphere of rights and freedoms of an individual in accordance with the purpose of enforcement.

Forced performance of administrative and legal obligations is a last resort, which occurs when the entity on which they have been imposed fails to perform them voluntarily, despite having been warned of the possibility of applying an enforcement sanction (principle of threat). Reaching for this compulsion,

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<sup>85</sup> P. Przybysz, *Postępowanie...*, pp. 34–35.

<sup>86</sup> *Postępowanie egzekucyjne w administracji. Komentarz*, R. Hauser, M. Wierzbowski (eds.), Warszawa 2021.

<sup>87</sup> M. Romańska, *Postępowanie...*, p. 100.

<sup>88</sup> J. Wyporska-Frankiewicz, *Gwarancje...*, p. 29.

<sup>89</sup> The success of the execution of cash benefits depends on the acquisition by the creditor, the enforcement authority of data on the financial situation of the debtor, their sources of income and assets to which the execution may be directed. Access to them is difficult - privacy protection. M. Romańska, *Postępowanie...*, p. 169.

<sup>90</sup> J. Wyporska-Frankiewicz, *Gwarancje...*, p. 341.

however, is also a necessity, because the obligations provided for by administrative law are imposed on their addressees in the public interest and must be performed in this interest. However, as A. Cudak<sup>91</sup> However, as A. Cudak rightly pointed out, organized and effective state coercion plays a preventive role and indirectly shapes the behavior of individuals. Many times, even the entity itself is not aware that its legalistic behavior is a consequence of properly shaped state coercion. It is also worth noting that the implementation of public law obligations depends to a large extent on the level of legal culture of the society<sup>92</sup>.

Summing up, it seems important to maintain appropriate proportions between the effectiveness of performing duties and the need to protect the obligated party. In Poland, a high degree of formalization of e.p.a. is indicated, which may lead to interference in the most valuable human goods.

It is worth emphasizing clearly that the actions taken in the course of the e.p.a. cannot constitute either repression or symbolic 'payback' to the person obligated by coercion and ailment for not voluntarily fulfilling his obligations. This is guaranteed by the principles of e.p.a. (techniques of their use, gradation of enforcement measures, impossibility of using other means than those indicated in the act, emphasizing the importance of social dignity). The principles contained in the enforcement act in administration constitute the basic source of procedural rights of the obligated party, they affect the shape and level of procedural guarantees granted<sup>93</sup>. For example, the protection of human dignity permeates all the above-mentioned principles. The right to private property and the guarantees of its protection as well as social rights are particularly prominent in the framework of the minimum subsistence principle. These principles lead to reliable enforcement proceedings with a strictly defined and legally justified scope of activities of public authorities, e.g. the principle of legality<sup>94</sup>.

The obliged person is guaranteed protection against too far-reaching execution<sup>95</sup>. It is worth emphasizing that socio-economic changes in the functioning of state finances (economic values), wealth between individuals and extensive information technology will require the rules to be adapted to the challenges of the 21st century. In addition, there are current issues such as: the energy crisis, inflation, energy problems, which indicate the need to change the rules, e.g. minimum subsistence. It is also necessary to indicate a new way of thinking about the state and the law and the position of the individual in the state<sup>96</sup>.

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<sup>91</sup> A. Cudak, *Zarzut w sprawie egzekucji administracyjnej...*, p. 75.

<sup>92</sup> W. Piątek, A. Skoczylas, *Zagadnienie administracyjnoprawnych metod zapewnienia wykonania obowiązków*, [in:], *System prawa administracyjnego*, t. 9: *Prawo procesowe administracyjne*, R. Hauser, Z. Niewiadomski, A. Wróbel (eds.), Warszawa 2020.

<sup>93</sup> M. Romańska, *Postępowanie...*, p. 26, 86, 175.

<sup>94</sup> *Postępowanie egzekucyjne w administracji. Komentarz*, R. Hauser, M. Wierzbowski (eds.), Warszawa 2021.

<sup>95</sup> J. Wyporska-Frankiewicz, *Gwarancje...*, p. 348.

<sup>96</sup> P. Przybysz, *Postępowanie...*, pp. 27–28.

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## **Wpływ zasad administracyjnego postępowania egzekucyjnego na ochronę praw zobowiązanego w postępowaniu egzekucyjnym w administracji**

### **Streszczenie**

W artykule podjęto próbę ukazania wpływu zasad postępowania egzekucyjnego w administracji na ochronę praw zobowiązanego w administracyjnej procedurze egzekucyjnej. Z trzech grup zasad charakterystycznych dla egzekucji administracyjnej skoncentrowano się na tych, które zawarte są w ustawie o postępowaniu egzekucyjnym w administracji. Zasady odgrywają istotną rolę dla przebiegu postępowania egzekucyjnego, szczególnie w odniesieniu do ochrony sytuacji prawnej zobowiązanego. Stanowią one o ustawowej podstawie wkraczania w sferę praw i wolności jednostki zgodnie z celem egzekucji. Zwrócono również uwagę na rolę zobowiązanego jako podstawowego i najważniejszego podmiotu postępowania egzekucyjnego w administracji oraz na fakt, iż w trakcie stosowania procedury egzekucyjnej dochodzi do ingerencji w sferę praw i wolności jednostki. Przymus egzekucyjny nie może wiązać się z wyrządzeniem zobowiązanemu nadmiernej dolegliwości, co wydaje się szczególnie istotne w kontekście takich kwestii, jak wzrost inflacji, kryzys energetyczny czy sytuacja społeczno-gospodarcza spowodowana pandemią COVID-19. W artykule wykorzystano metody badawcze, takie jak analiza normatywno-instytucjonalna, metoda analizy dokumentów oraz aktualnie obowiązujących aktów prawnych.

**Słowa kluczowe:** zasady postępowania egzekucyjnego w administracji, administracyjne postępowanie egzekucyjne, egzekucja administracyjna, zobowiązany w postępowaniu egzekucyjnym w administracji, ochrona praw jednostki, ochrona praw zobowiązanego w postępowaniu egzekucyjnym w administracji.