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# Evolution of the legal regulation regarding administrative enforcement proceedings in Poland

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## 1. Introduction

The current legal regulation of administrative enforcement proceedings in Poland developed as a result of an evolution initiated after the regaining of independence in 1918. Undertaking historical research on the development of this regulation is justified by the fact that understanding the process of formation of the currently functioning institutions of this procedure may contribute to their more comprehensive understanding. The argument raised in the literature that a historical approach in the study of law is useful in determining the meaning of terms occurring in legal acts, the sources of their ambiguity, and, consequently, in clarifying the legal vocabulary is also of significance.<sup>1</sup> This observation holds full relevance with regard to the terminology found in the

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<sup>1</sup> M. Górnicka, *Wersja systemowa metody historyczno-prawnej na przykładzie prawa dowodowego w polskiej procedurze karnej*, "Folia Iuridica Universitatis Wratislaviensis" 2015, Vol. 4(2), p. 12.

law on enforcement proceedings in administration. The study of this regulation with the application of the historical-legal method offers the potential to explore the historical genealogy of individual legal terms appearing in the provisions regulating these proceedings, thus facilitating the ascertainment of their meaning.

The objective of this work is to retrace and analyze the evolution of the legal regulation of administrative enforcement proceedings and to establish the main regularities and directions of its development. Against this background, an attempt will be made to evaluate the existing legal solutions and to formulate *de lege ferenda* conclusions, including proposals concerning the rejection or application of legal solutions developed in the past.

## 2. The period from 1918 to 1928

Upon regaining independence in 1918, the laws in force on the territory of Poland were those of the former partitioning states<sup>2</sup> and were progressively replaced by a uniform regulation applicable throughout the country. This was true for the entire system of law, including the provisions governing administrative enforcement. The grounds for the organization of regulations in this area was the March Constitution of 1921,<sup>3</sup> whose provisions allowed the use of state coercion to ensure the execution of legal acts enacted by executive authorities.<sup>4</sup>

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<sup>2</sup> As J. Borkowski indicates, these were the provisions of the Prussian law of 1883 on the general administration of the country and the Austrian imperial decree of 1854 on the use of coercive measures. See J. Borkowski, *Kodyfikacja polskiego prawa o postępowaniu administracyjnym na tle prawnoporównawczym*, in: B. Adamiak, J. Borkowski, *Postępowanie administracyjne i sądowno administracyjne*, Warszawa 2015, p. 65.

<sup>3</sup> Act of 17 March 1921 Constitution of the Republic of Poland, Journal of Laws No. 44, item 267.

<sup>4</sup> Article 44 of the March Constitution of 1921 stipulated that "The President of the Republic has the right to issue, for the purpose of executing the statutes and with reference to the statutory authorization, executive ordinances, directions, orders and prohibitions, and to insure their execution by the use of force. The ministers and the authorities subordinate to them have the same right in their respective fields of jurisdiction." In turn, according to

The provisions regulating administrative enforcement proceedings introduced on this premise in the first years of the rebirth of the Polish state were of a fragmentary nature and concerned the enforcement of monetary dues. The first legal acts containing such provisions were the Act of 14 December 1923 on the powers of the executive bodies of the fiscal authorities<sup>5</sup> (hereinafter: the 1923 Act) and the regulation of the Minister of the Treasury of 24 June 1925 issued in agreement with the Minister of Internal Affairs and the Minister of Justice to implement the Act of 14 December 1923 on the powers of the executive bodies of the fiscal authorities<sup>6</sup> (hereinafter: the 1925 Executive Regulation). Among the powers granted to the executive bodies of the fiscal authorities, the 1923 Act mentioned the levying of dues and the collection of monetary arrears in the field of direct taxes and stamp duties. However, it failed to regulate enforcement proceedings, merely indicating the means of action that these authorities could use in the course of monitoring compliance with fiscal regulations and carrying out activities of an investigative nature aimed at detecting fiscal and customs offences (“criminal acts provided for in the regulations on taxes, fees, and duties”). Similarly, no provisions on enforcement proceedings were contained in the above-mentioned Executive Order of 1925. It primarily regulated the actions of the enforcement bodies of the fiscal authorities undertaken for the purpose of detecting fiscal and customs offences (e.g., temporary seizure and taking into safekeeping of items presumed to be related to criminal activity, carrying out searches of premises and persons, etc.). The importance of this regulation for enforcement proceedings lay primarily in the fact that it regulated the material and local jurisdiction of the enforcement bodies of the revenue authorities, whose duties included the collection of monetary debts. As for the conduct of enforcement proceedings, this issue was relatively broadly regulated in the Instruction on

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Article 44 “Laws shall prescribe coercive measures interrogating administrative authorities to carry out their orders.”

<sup>5</sup> Journal of Laws of 1924 No. 5, item 37.

<sup>6</sup> Journal of Laws No. 83, item 576.

the Enforcement of State Taxes and Fees and Other Tax Receivables, issued on 17 May 1926 by the Minister of Finance<sup>7</sup> (hereinafter: Enforcement Instruction). It conferred powers to enforce state taxes, local government allowances on these taxes, and other fiscal dues on the enforcement authorities of the first instance, i.e., the Tax and Fee Offices. The tasks of these authorities included ensuring that enforcement activities were carried out in a correct manner and in compliance with the applicable regulations. Their legal status was comparable to the enforcement authorities of today. The bodies of second instance were the Treasury Chambers, which supervised enforcement and examined complaints against breaches of the enforcement procedure. The execution of enforcement activities belonged to the enforcement authorities' executive bodies, which, according to the Enforcement Instruction, consisted of sequestrators (with a status similar to that of today's tax collectors) and other enforcement authority officials acting on the authority vested in them.

The basis for the enforcement proceedings was an enforceable title, which was a writ of execution or payment request for taxes, fees, and other fiscal dues, final criminal judgments, and decisions and rulings of fiscal authorities.

The Enforcement Instruction introduced the principle of conducting enforcement in the manner least burdensome for the obliged party. It was manifested, *inter alia*, by the obligation to "ensure that the debtor does not suffer unnecessary damage" (§ 8), as well as by the requirement to conduct enforcement activities during daytime and on weekdays. In addition, the principle of a warning applied, whereby the enforcement authorities were obliged to summon (admonish) the obliged parties to pay their dues upon expiry of the due date, on pain of compulsory enforcement of the dues in the event of non-payment within 14 days from the date of the request. The provisions of the Enforcement Instruction also stipulated the requirement to follow the principle of economical execution, which was expressed in the fact that the

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<sup>7</sup> Journal of Laws of the Minister of the Treasury No. 15, item 168.

attachment should be made to the extent necessary to cover the arrears together with penalties and interest on arrears and enforcement costs. The instruction in question prescribed that the principle of respect for the subsistence minimum, as well as the protection of the economic interests of the debtor, be observed. The first of these principles was that the seizure of household appliances was only permissible if the debtor had no other movable assets from which enforcement was possible. Further, the instruction provided for the exclusion from enforcement of various movables necessary for the debtor's livelihood, listed in an annex to the instruction. Exemptions were separately regulated for movables forming part of the debtor's income-producing holding. In turn, the principle of protecting the debtor's economic interests was expressed in the fact that the enforcement authority should avoid jeopardizing his economic existence. The enforcement authority was entitled to suspend enforcement if it found that "the absolute collection of the debt would undoubtedly cause the economic ruin of the payer" (§ 13).

In addition to the above-mentioned rules for the conduct of administrative enforcement, the Instruction addressed in relative detail the procedure for the application of enforcement against movable property, including the manner of seizure of such property, its storage, as well as auction sales.

As noted earlier, Polish regulations introduced in the early years after the restoration of independence concerned only the compulsory enforcement of monetary debts, while the enforcement of non-monetary liabilities continued to be governed by the laws of the former partitioning countries,<sup>8</sup> which meant an absence of uniform regulation across the state.<sup>9</sup> As indicated in the literature, the legislation in force at the time provided for three measures to enforce non-monetary obligations. These included:

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<sup>8</sup> See footnote 2.

<sup>9</sup> See Z. Leoński, *Egzekucja administracyjna świadczeń niepieniężnych*, Warszawa 1968, pp. 21–22; J. Radwanowicz, *Uwagi o przymusie administracyjnym*, in: *Jednostka wobec działań administracji publicznej*, E. Ura (ed.), Rzeszów 2001, p. 382.

(1) penalty for disobedience, (2) performance of the obligation at the expense of the disobedient party and (3) direct coercion.<sup>10</sup>

### 3. The first codification of administrative enforcement proceedings

The first codification of enforcement proceedings by the Regulation of the President of the Republic of Poland of 22 March 1928 on Enforcement Administrative Proceedings<sup>11</sup> (hereinafter: the 1928 Regulation or R.E.A.P.) was of fundamental importance in the process of shaping a uniform legal regulation of administrative enforcement proceedings across the state. This act was issued together with two other ordinances of the President of the Republic of Poland dated the same day: one on administrative proceedings<sup>12</sup> and one on criminal-administrative proceedings,<sup>13</sup> which, following the example of the measures adopted in Austria in 1925,<sup>14</sup> codified the system of Polish administrative proceedings. As a result of the issuance of these legal acts, Poland found itself in the group of those few countries that had already codified administrative proceedings in the interwar period.<sup>15</sup>

The 1928 Regulation contained provisions on the manner of enforcing by appropriate coercive means the applicable legal provisions and the judgments, orders, injunctions, and prohibitions of administrative authorities. It was applicable with regard to the enforcement of monetary contributions as well as to obligations of a non-monetary nature, thus unifying the legal regulation of the coercive enforcement of these two categories of liability.

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<sup>10</sup> See Z. Leoński, *Egzekucja administracyjna*, p. 22; J. Radwanowicz, *Uwagi o przymusie administracyjnym*, p. 382.

<sup>11</sup> Journal of Laws No. 36, item 342.

<sup>12</sup> Journal of Laws No. 36, item. 341.

<sup>13</sup> Journal of Laws No. 38, item. 365.

<sup>14</sup> See Z. Leoński, *Egzekucja administracyjna*, p. 22.

<sup>15</sup> Before World War II, codification of administrative procedure was carried out by countries such as Czechoslovakia in 1928, Yugoslavia in 1930, as

The enforcement proceedings regulated by the 1928 Ordinance were underpinned by the general principles already established by the 1926 Instruction, albeit that the content of some of them had been modified and new principles added. The catalogue of these principles included:

- the principle of a warning, the substance of which was the requirement to precede the application of coercive measures by a warning with an indication of the time after which it would be applied and the coercive measure;
- the principle of the most lenient coercive measure which, in the opinion of the authority, achieves the desired objective;
- the principle of respect for the subsistence minimum, the substance of which was that enforcement was only allowed to the extent that the minimum subsistence of the debtor and any dependants was not thereby jeopardised;
- the principle of necessity, which implied that coercive measures must be discontinued as soon as the intended effect had been achieved, in particular once the obligation had been fulfilled, or if fulfilment of the obligation had become unreasonable or impossible for the party against whom enforcement was sought;
- the principle of frugality, according to which first of all household goods were seized and only after that were the movables belonging to the income-earning household; of the movables belonging to the household, the first to be seized were the “luxury items” such as valuables, jewels and securities, secondly cash;
- the principle of independent application of enforcement measures from other legal remedies, to the effect that coercive measures could be applied independently of judicial administrative penalties in individual provisions for transgressions or violations.

As accurately noted by J. Borkowski, the general principles of enforcement proceedings introduced in the 1928 Regulation have

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well as some German states (Thuringia in 1926, and Bremen in 1934.). See J. Borkowski, *Kodyfikacja polskiego prawa*, p. 60.

become a long-standing element of the legal regulation of these proceedings.<sup>16</sup>

The provisions of the 1928 Regulation introduced a distinction between the enforcement authority, which was the state authority with the power to order and supervise enforcement, and the enforcement body, appointed to conduct enforcement directly. The name 'debtor' was used to designate the subject against whom administrative enforcement was carried out, and it is still used in the same sense today (previously, the Enforcement Instruction used two terms interchangeably: payer or debtor under enforcement).

Enforcement proceedings were initiated on the basis of an order issued by an enforcement authority based on an enforceable title, which consisted of the provisions of the applicable legislation when the obligation resulted directly from that legislation without the need for an act, from general orders addressed to the general public or to a specific group of persons, or from individual judgments, orders, injunctions, and prohibitions provided for by law. The enforcement order could be challenged by means of an appeal by the party against whom enforcement was sought and by an applicant on the grounds of non-compliance of the order with the enforcement order, or the use of coercive measures not prescribed by the regulation or in breach of the principle of the most lenient enforcement measure and the fact of inadmissibility of enforcement.

With a view to enforcing monetary benefits, the enforcement authorities could employ the following: seizure and sale of movable property, seizure of money held by the debtor, seizure of money or other movable property owned by the debtor and held by third parties, and seizure of wages and other income of the debtor. Meanwhile, when it came to the enforcement of obligations of a non-monetary nature, the following three enforcement measures were applicable: substitute performance, coercive fines, and direct coercion.

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<sup>16</sup> See J. Borkowski, *Kodyfikacja polskiego prawa*, p. 66.



#### 4. The period of the two-tier regulation of administrative enforcement proceedings (1932–1966)

The concept of uniform regulation of the enforcement of non-monetary obligations and monetary dues, originally adopted in the 1928 Regulation, was abandoned relatively quickly. The Act of 10 March 1932 on the assumption of administrative enforcement by fiscal authorities and on enforcement proceedings of fiscal authorities<sup>17</sup> (hereinafter: the 1932 Act) and two regulations of the Council of Ministers of 25 June 1932: on the enforcement proceedings of fiscal authorities<sup>18</sup> and on the exclusion of certain types of monetary benefits from enforcement by fiscal offices<sup>19</sup> introduced a separate procedure for the administrative enforcement of fiscal monetary receivables. The regulation contained in the 1932 Act was considerably succinct (it contained only 6 articles) and was limited to conferring on tax offices the competence to enforce the collection of all kinds of pecuniary benefits subject to administrative enforcement, introducing the possibility of enforcing fines, and fines, fees, and costs adjudged in criminal court proceedings, establishing the principle according to which the implementation of enforcement proceedings was effected on the basis of an enforcement order, and giving the Council of Ministers a very broad authorization to regulate, by means of regulations, the enforcement proceedings of the tax authorities with respect to all kinds of tax receivables and monetary benefits provided for in this Act. With this authorization, the legislator formulated certain indications which the Council of Ministers should take into account in the regulations it issued.<sup>20</sup> Unlike the 1932 Act, the Executive Order was a comprehensive act

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<sup>17</sup> Journal of Laws of the Republic of Poland No. 32, item 328.

<sup>18</sup> Journal of Laws of the Republic of Poland No. 62, item 580.

<sup>19</sup> Journal of Laws of the Republic of Poland No. 62, item 581.

<sup>20</sup> Pursuant to Article 4(2) of the 1932 Act, the regulations should provide for the auctioning of immovable property only by judicial procedure, as well as the application of Article 28 of the Presidential Decree of 1928 with regard to real estate by designation and Articles 39 and 40 of that Regulation concerning the auctioning of movable property.

(128 paragraphs), containing relatively detailed provisions on enforcement proceedings. Part I, entitled 'General Provisions,' regulated, *inter alia*, the scope of enforcement of monetary receivables, the competence of enforcement authorities and bodies, the commencement and grounds for enforcement, the suspension and discontinuance of proceedings, the exemption of persons from enforcement, the exemption of certain components from enforcement, the appeals (appeal against a decision of a tax office and complaint against an unlawful procedure of the enforcement bodies) and enforcement costs; while Part II of the regulation, entitled 'Specific Provisions,' regulated the application of individual enforcement measures: enforcement of movable property, including the procedure for the seizure and sale of movable property and the disclosure of assets, as well as enforcement of monetary claims and other property rights. The 1932 Ordinance also contained provisions governing the securing of monetary claims (Part III) and fees in administrative enforcement proceedings (Annex to the Ordinance).

It is worth noting that Article 6 of the 1932 Act suspended for the duration of the Act all provisions incompatible with it, which meant that the provisions of the Regulation of the President of the Republic of Poland of 1928 were no longer applicable to the enforcement of pecuniary charges. As a result of the introduction of such solutions, a model of a two-tier legal regulation of enforcement proceedings was formed, whereby the enforcement of pecuniary receivables was based on the 1932 Act and its implementing regulations, while non-pecuniary obligations continued to be enforced on the basis of the provisions of the 1928 Regulation.

With the end of World War II, the legal acts regulating administrative enforcement proceedings dating from the inter-war period continued to be in force. The first legal change to the regulation of these proceedings was made by the Decree of 26 April 1945 on supplementing the Act of 10 March 1932 on the assumption of administrative enforcement by fiscal authorities and on the enforcement proceedings of fiscal authorities.<sup>21</sup> It consisted only in

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<sup>21</sup> Journal of Laws of the Republic of Poland No. 50, item 283.

extending the authorization for the Council of Ministers to establish a special procedure for the collection of monetary dues from profit-making enterprises not maintaining permanent establishments. Two years later, the Decree of 28 January 1947 on the administrative enforcement of pecuniary benefits<sup>22</sup> (hereinafter: the 1947 Decree) introduced a new regulation of the enforcement of pecuniary receivables. The provisions of this act regulated the mode of enforcement of these benefits in a manner similar to that previously provided for by the 1932 Executive Decree, but also introduced a number of new legal measures. An important change was the fact that the provisions regulating enforcement proceedings were now directly contained in the decree, which was an act with the force of statute, and not in the executive act, as had previously been the case. The provisions of the decree introduced new names for the participants in the proceedings, which were the creditor and the debtor, and defined these terms. The decree broadened the system of legal remedies by adding, alongside the previously known complaint against the enforcement authority's decision, other legal remedies such as a complaint against enforcement actions and a request to exclude from enforcement the property or property rights held by a third party claiming rights to the seized property or a part thereof. These new remedies are still retained today. The provisions of the 1947 Decree, in addition to the previously known enforcement remedies of execution of movables and execution of monetary claims and other property rights, provided for new enforcement remedies in the form of the enforcement of shares in companies and cooperatives, the enforcement from enterprises and the enforcement of benefits and income from real estate by compulsory administration. The 1947 Decree also contained provisions regulating proceedings to secure claims and costs in enforcement proceedings.

The provisions of this act, as indicated by its title, regulated the enforcement of pecuniary receivables, while the forced enforcement of obligations of a non-pecuniary nature was based on

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<sup>22</sup> Journal of Laws No. 21, item 84 as amended.

the provisions of the Regulation of the President of the Republic of Poland of 1928, which in this respect retained binding force. Thus, after the World War II, the concept of the two-tier regulation of enforcement proceedings in administration initiated in 1932 continued to be maintained.

It is noteworthy that both of these legal acts were repeatedly amended until their expiry (which took place on 1 January 1967). The changes consisted mainly in broadening the subject and object scope of administrative enforcement.<sup>23</sup>

## 5. The second codification of administrative enforcement proceedings and its evolution

The next stage in the evolution of the regulations governing administrative enforcement proceedings was the adoption of a new codification of these proceedings by the Act of 17 June 1966 on enforcement proceedings in administration<sup>24</sup> (hereinafter: 'the Enforcement Act,' 'the Act' or 'E.P.A.A.'), which entered into force on 1 January 1967 and is in effect to date. The regulations contained in this Act were complemented by executive acts, including first and foremost the Regulation of the Council of Ministers of 27 September 1966 on the implementation of the act on enforcement proceedings in administration.<sup>25</sup>

The model of enforcement proceedings adopted in the Enforcement Act and executive acts did not deviate in any fundamental way from that adopted earlier in the Presidential Decree of 1928 and the 1947 Decree. The most important change in respect to the earlier period was the codification of administrative enforcement of pecuniary and non-pecuniary obligations within a single act. The consolidation of the enforcement of both these categories

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<sup>23</sup> More broadly these changes are presented by K. Jandy-Jendrońska, *System administracyjnego postępowania wykonawczego*, in: *System prawa administracyjnego*, T. Rabska, J. Łętowski (ed.), Wrocław 1978, pp. 269–270.

<sup>24</sup> Journal of Laws No. 24, item 151

<sup>25</sup> Journal of Laws No. 45, item 279 as amended.

of obligations meant the rejection of the concept of the two-tier regulation of enforcement proceedings in force since 1932 and reverting to the solutions originally adopted in the 1928 decree.

An important characteristic of the 1966 codification of enforcement proceedings, distinguishing it from earlier solutions, was that it was linked to the general administrative proceedings regulated by the Code of Administrative Procedure by introducing the principle of the appropriate application of the provisions of that code in cases not regulated by the Enforcement Act.<sup>26</sup>

The Enforcement Act is divided into four sections:

- Section I, entitled ‘General Provisions,’ which norms the scope of the Act and the rules for the conduct of enforcement proceedings,
- Section II, entitled ‘Enforcement of pecuniary receivables,’ which contains provisions regulating the application of enforcement measures (enforcement of cash, labor remuneration, enforcement of bank accounts and savings deposits, enforcement of other pecuniary receivables and other property rights, enforcement of movable property), and rules for the enforcement of pecuniary receivables from state-owned entities,
- Section III, entitled ‘Enforcement of non-pecuniary claims,’ which regulates the application of enforcement measures used in the enforcement of the obligations indicated in its title: coercive fines, substitute performance, seizure of movable property, seizure of real property, vacating premises or facilities, and direct coercion,
- Section IV, entitled ‘Proceedings to secure claims,’ which contains provisions on the application of the measures provided under this section to secure the performance of obligations subject to administrative enforcement.

The legal arrangements adopted in the Enforcement Act have been widely analyzed in the literature, and therefore will not be analyzed here, with further comments focused on the evolution

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<sup>26</sup> J. Borkowski, *Kodyfikacja polskiego prawa*, p. 66.

of the provisions contained in this act. At the same time, it would not be possible or even advisable in this short study to discuss all the changes in detail;<sup>27</sup> however, it seems justified to undertake an attempt to distinguish the stages of development of the analyzed regulation and to provide a general characteristics of the most important legal solutions introduced in respective periods.

It is possible to distinguish four fundamental stages in the evolution of the provisions of the Enforcement Act:

- A. the period in which the Enforcement Act was in force in the People's Republic of Poland, covering the time interval from its entry into force until the commencement of the political and constitutional changes in Poland after 1989;
- B. the period from 1990 to 2001;
- C. the period initiated by the fundamental reform of enforcement proceedings made by the 2001 amendment lasting until the second fundamental revision of the provisions on enforcement proceedings made by the 2019 Acts;
- D. the period from the entry into force of the 2019 Acts to the present day.

#### A. The period from the entry into force of the Enforcement Act until the year 1989

In the first of the distinguished periods, administrative enforcement did not play as important a role as it does today. Under the social and political system of the time, founded on a nationalized economy, the use of enforcement, notably for the collection of monetary debts, was of marginal importance. The Enforcement Act designed for those times, operating in social and economic conditions that did not undergo significant changes, did not require frequent revision. Thus, the law was amended only three times during that period, with modifications concerning single articles or parts thereof, made to take into account changes introduced in the legal system. The first amendment was made by the

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<sup>27</sup> From the date of entry into force until the time of this writing (August 2023), the Enforcement Act has been amended as many as 158 times.

Act of 28 May 1975 on the two-tier administrative division of the State and amendments to the Act on National Councils,<sup>28</sup> which regulated the transfer of tasks and competences (including administrative enforcement) from the liquidated district level to the basic organizational level. The second amendment, made by the Act of 16 September 1982 – the Cooperative Law,<sup>29</sup> consisted only in the repeal of the exclusion from enforcement of the claims of cooperative members, provided for in Article 9 in § 3 of the E.P.A.A., which are attributable to them by virtue of their share in the cooperative's income from the annual general account. Finally, the third amendment was an effect of the reorganization of the tax administration introduced by the Act of 29 December 1982 on the Office of the Minister of Finance and the Treasury Offices and Chambers,<sup>30</sup> which conferred competences with regard to the enforcement of monetary dues on the newly-established tax offices and instituted new bodies to supervise the enforcement, which were the province governors and, with regard to the enforcement of monetary dues, the treasury chambers. It is worth mentioning that during this period, the Council of Ministers issued a new regulation of 27 December 1985 on the implementation of the Law on Enforcement Proceedings in Administration,<sup>31</sup> which replaced the 1966 executive order.

## B. The period from 1990 to 2001

The frequency and extent of amendments to the Enforcement Act gained momentum in connection with the political changes initiated in Poland after 1989, among which the introduction of the principles of a free market economy and the restoration of democratic institutions such as local self-government and full judicial review of public administration activities contributed most to the evolution of the law on enforcement proceedings. The first amend-

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<sup>28</sup> Journal of Laws No. 16, item 91.

<sup>29</sup> Journal of Laws No. 30, item 210.

<sup>30</sup> Journal of Laws No. 45, item 289.

<sup>31</sup> Journal of Laws of 1986 No. 1, item 4 as amended.

ment to the Enforcement Act in this period was made by the Act of 23 March 1990 amending the Act on Enforcement Proceedings in Administration,<sup>32</sup> which adjusted the existing legal solutions to the necessary extent with a view to ensuring efficient and effective administrative enforcement in the new changing economic conditions. The most notable changes introduced by this law include: clarification of the scope of application of administrative enforcement with regard to pecuniary receivables, modification of the exemptions of property and property rights from enforcement, regulation of the issue of supervision of enforcement, conferment on enforcement bodies of the right to request explanations from the participants in the proceedings and to obtain from state administration bodies and institutions the information essential for the conduct of enforcement, introduction of a new enforcement measure in the form of enforcement from pension and social security benefits, further clarification of the course of enforcement from movable property, and the introduction of new legal remedies: complaints against the enforcement actions of the enforcement authority and the enforcer, and complaints about the protraction of enforcement proceedings. The legal measures introduced on that occasion remain valid to this day. It is worth noting that, because of the relatively numerous changes, the first consolidated text of the Act was promulgated in 1991.<sup>33</sup>

Subsequent modifications of the provisions of the Enforcement Act were made during the period in question with a view to achieving their improvement,<sup>34</sup> as well as to adapting them to legislation reforming the system of the state, including the sys-

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<sup>32</sup> Journal of Laws No. 21, item 126.

<sup>33</sup> Journal of Laws No. 36, item 161.

<sup>34</sup> Act of 11 October 1996 amending the Act on Enforcement Proceedings in Administration and the Act – Construction Law (Journal of Laws No. 146, item 680, Act of 8 December 2000 on amending the Act on Enforcement Proceedings in Administration, the Act on Local Taxes and Fees, the Act on Interest Subsidies on Certain Bank Credits, the Act – the Law on Public Trading in Securities, the Act – the Tax Ordinance, the Act on Public Finance, the Act on Corporate Income Tax and the Act on Commercialisation and Privatisation of State Enterprises – in relation to adaptation to the law of the European Union (Journal of Laws No. 122, item 1315).



tem of public administration,<sup>35</sup> tax law,<sup>36</sup> banking law,<sup>37</sup> social security law,<sup>38</sup> bankruptcy law,<sup>39</sup> the National Court Register,<sup>40</sup> military discipline,<sup>41</sup> classified information,<sup>42</sup> commercial law,<sup>43</sup> and the State Labour Inspectorate.<sup>44</sup> Also worth mentioning is the amendment of the Enforcement Act to adapt Polish law to the

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<sup>35</sup> The first one, introduced by the Act of 17 May 1990 on the division of tasks and competences specified in special laws between municipal bodies and government administration bodies and on the amendment of certain laws (Journal of Laws No. 34, item 198), was connected with the restoration of local self-government in Poland and consisted in the adaptation of provisions regulating the competence of enforcement bodies and creditors to the new system of territorial administration. Subsequent amendments to the Enforcement Act introduced by the Act of 24 July 1998 amending certain acts defining the competences of public administration bodies – in connection with the system reform of the state (Journal of Laws No. 106, item 668) and by the Act of 29 December 1998 amending certain acts in connection with the implementation of the system reform of the state (Journal of Laws No. 162, item 1126) were connected with the introduction of the reform of the territorial administration system as of 1 January 1999, consisting, *inter alia*, in the restoration of the three-tier basic territorial division of the country and the establishment of the territorial administration system.

<sup>36</sup> Act of 6 March 1993 amending certain acts regulating taxation and certain other acts (Journal of Laws No. 28, item 127) and the Tax Ordinance Act of 29 August 1997 (Journal of Laws No. 137, item 926).

<sup>37</sup> Act of 14 February 1992 amending the Act – Banking Law and certain other acts (Journal of Laws No. 20, item 78)

<sup>38</sup> Act of 22 June 1995 amending the Act on the organization and financing of social insurance and amending certain other acts (Journal of Laws No. 85, item 426).

<sup>39</sup> Act of 1 March 1996 amending the Code of Civil Procedure, the Orders of the President of the Republic – Bankruptcy Law and the Law on Arrangement Proceedings, the Code of Administrative Procedure, the Act on Court Costs in Civil Cases (Journal of Laws No. 43, item 189).

<sup>40</sup> Act of 30 November 2000 amending the Act on the National Court Register, the Bankruptcy Law, the Act on Enforcement Proceedings in Administration, the Act on the publication of the Judicial and Economic Official Gazette and the Act – the Law on Business Activity (Journal of Laws No. 114, item 1193).

<sup>41</sup> Act of 4 September 1997 on military discipline (Journal of Laws No. 141, item 944).

<sup>42</sup> Act of 22 January 1999 on the protection of classified information (Journal of Laws No. 11, item 95).

<sup>43</sup> Act of 15 September 2000 the Commercial Companies Code (Journal of Laws No. 94, item 1037).

<sup>44</sup> Act of 21 June 2001 amending the Act on the State Labour Inspectorate and the Act on Enforcement Proceedings in Administration (Journal of Laws No. 76, item 809).

requirements of European Union law governing the principles of rendering assistance to a foreign state and the use of assistance from a foreign state in the recovery of monetary debts. Provisions concerning this matter were introduced into the Enforcement Act by the Act of 8 December 2000 amending the Act on Enforcement Proceedings in Administration, the Act on Local Taxes and Fees, the Act on Interest Subsidies on Certain Bank Credits, the Act – Law on Public Trading in Securities, the Act – Tax Ordinance, the Act on Public Finance, the Act on Corporate Income Tax, and the Act on Commercialization and Privatization of State Enterprises – in connection with adaptation to European Union law.<sup>45</sup>

It is worth adding that, during the period under review, new enforcement acts were also issued, including the Ordinance of the Council of Ministers of 23 December 1996 on the implementation of the Act on Enforcement Proceedings in Administration<sup>46</sup> and the Ordinance of the Minister of Finance of 28 October 1991 on the procedure to be followed by creditors of monetary receivables when initiating actions aimed at the application of enforcement measures,<sup>47</sup> which was replaced by the Ordinance of the Minister of Finance of 8 April 1997 bearing the same title.<sup>48</sup>

### C. The period from the amendment of the Enforcement Act in 2001 until its amendments by the Acts of 2019

An important stage in the development of the legal regulation of administrative enforcement proceedings was the amendment of the Enforcement Act effected by the Act of 6 September 2001 amending the Act on enforcement proceedings in administration and certain other acts<sup>49</sup> (hereinafter: “the 2001 amendment”). This was without doubt the most extensive amendment to the Enforcement Act in its history, as it gave shape to the legal measures existing to this day. The amendment covered substantially all the provisions

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<sup>45</sup> Journal of Laws No. 122, item 1315.

<sup>46</sup> Journal of Laws of 1997 No. 1, item 1 as amended.

<sup>47</sup> Official Gazette No. 38, item 272 and of 1994 No. 58, item 495.

<sup>48</sup> Official Gazette No. 23, item 219.

<sup>49</sup> Journal of Laws No. 125, item 1368.

of the Act, with the exception of the regulations concerning the enforcement measures used in the enforcement of obligations of a non-pecuniary character. The most important changes include: the introduction of an extensive glossary of expressions used in the Act, broadening of its scope of application, modification of the general principles of the proceedings, regulation of the jurisdiction of enforcement bodies, introduction of new components of the enforcement title, modification of the means of appeal, clarification of the provisions on the suspension and discontinuance of proceedings, detailed regulation of enforcement costs, definition of the legal position of the debtor of a seized debt, clarification of the rules for the application of individual enforcement measures in the enforcement of monetary receivables, and introduction of new enforcement measures such as: enforcement of receivables against rights from securities recorded in a securities account, enforcement against claims from a cash account, against securities not credited to a securities account, enforcement against a bill of exchange, enforcement against an author's economic and related rights and industrial property rights, enforcement against a share in a limited liability company), and enforcement against real estate (previously this enforcement measure could only be used in court enforcement proceedings).

Another important amendment to the Enforcement Act introduced by the Act of 10 September 2003 amending the Act on Enforcement Proceedings in Administration<sup>50</sup> concerned the rules governing the provision of assistance to a foreign state and the use of its assistance in the recovery of monetary debts. The object of these amendments was to implement the directives of the European Communities concerning mutual assistance in the recovery of certain monetary claims. However, it should be noted that the then amended provisions of Chapter 7 in Section I of the Enforcement Act were subsequently repealed by the Act of 11 October 2013 on mutual assistance for the recovery of taxes, customs duties, and other monetary dues,<sup>51</sup> which in turn implemented the

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<sup>50</sup> Journal of Laws No. 193, item 1884.

<sup>51</sup> Journal of Laws of 2013, item 1289 as amended.

provisions of Council Directive 2010/24/EU of 16 March 2010 on mutual assistance for the recovery of claims relating to taxes, duties, and other charges.<sup>52</sup> The said Act comprehensively regulated the conduct of administrative enforcement in the framework of mutual assistance and, furthermore, amended many provisions of the Enforcement Act, not only because of the need to harmonize them with the new regulation of mutual assistance in the recovery of monetary debts, but also on account of the need to improve them. It is worth adding that, on the basis of the authorizations contained in the amended Enforcement Act, new implementing regulations were issued during the period under review.

Subsequent amendments to the Enforcement Act were aimed at aligning its provisions with the laws reforming the organization of tax administration: the Act of 10 July 2015 on tax administration,<sup>53</sup> and later – the Act of 16 November 2016 on the National Tax Administration.<sup>54</sup> The latter Act, alongside changes related to the introduction of the new tax administration system, supplemented the Enforcement Act with provisions regulating the conduct of electronic auctions. Also in 2015, the provisions of the Enforcement Act regulating the concurrence of judicial and administrative enforcement were amended and harmonized with the amendment of the provisions of the Code of Civil Procedure regulating judicial enforcement.<sup>55</sup> Another significant alteration to the Enforcement Act made in 2017<sup>56</sup> was the addition to the Act of provisions regulating the rules for the maintenance of the Public Debt Register and criminal liability for violation of these norms. The following year, provisions were introduced into the Enforcement Act concerning the conduct of administrative enforcement against the assets of an enterprise in inheritance, with

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<sup>52</sup> Journal of Laws of EU L 84 as of 31 March 2010.

<sup>53</sup> Journal of Laws of 2015, item 1269.

<sup>54</sup> Journal of Laws of 2016, item 1947.

<sup>55</sup> The amendments in question were introduced by the Act of 10 July 2015 amending the Act – Civil Code, the Act – Civil Procedure Code and certain other acts (Journal of Laws of 2015, item 1311).

<sup>56</sup> Act of 7 April 2017 on amending certain laws to facilitate the enforcement of claims (Journal of Laws 2017, item 933).

the aim of bringing its provisions into line with the then adopted Act of 5 July 2018 on the succession management of an enterprise of a natural person<sup>57</sup> regulating the rules of conduct of economic activity after the death of an entrepreneur who is a natural person with the use of the so-called enterprise in inheritance.

In the period under analysis, other minor modifications were made to the Enforcement Act, in addition to those indicated above, with the intent of harmonizing its provisions with changes in legislation.

#### D. The period from the amendment of the 2019 Acts to date

The final stage of the development of the legal regulation of enforcement proceedings in administration began with the enactment in 2019 of three Acts amending the Enforcement Act: the Act of 4 July 2019 amending the Act on enforcement proceedings in administration and certain other Acts<sup>58</sup>, the Act of 11 September 2019 with the same title,<sup>59</sup> and that of 30 August 2019 amending the Act – the Commercial Companies Code.<sup>60</sup> The scope of the changes introduced by these Acts was unquestionably the broadest since the 2001 amendment.

The most important changes made to enforcement proceedings by the first two Acts concerned the rules for the initiation of enforcement proceedings (they regulated, *inter alia*, the moment of their commencement) and administrative enforcement, the conduct of administrative enforcement against spouses' joint property and against the subject of a mortgage, the remedies available to the spouse of the debtor and the debtor *in rem*, the concurrence of enforcement, and the rules concerning the application of certain enforcement measures, including enforcement against money, movable property, and bank accounts. Moreover, the laws cit-

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<sup>57</sup> Journal of Laws of 2018, item 1629. The aforesaid law entered into force on 25 November 2018.

<sup>58</sup> Journal of Laws of 2019, item 1553.

<sup>59</sup> Journal of Laws of 2019, item 2070.

<sup>60</sup> Journal of Laws of 2019, item 1798, changing: Journal of Laws of 2020, item 875.

ed introduced a relatively large number of specific amendments aimed at either rectifying various flaws in the previous regulation or adapting the regulation contained therein to the changing legislation.<sup>61</sup>

The third law mentioned above, on the other hand, expanded the catalogue of enforcement measures used in the enforcement against monetary debts to include the enforcement against property rights registered in the shareholder register.

It is important to add that, in connection with the changes introduced by the above laws, more than a dozen new implementing regulations were issued.

The most recent, relatively comprehensive amendment of the Enforcement Act was effected by the Act of 9 March 2023 amending the Act on Enforcement Proceedings in Administration and certain other acts<sup>62</sup> (hereinafter: the 2023 amendment). In essence, many of the amendments introduced by this Act were aimed at addressing various shortcomings of the provisions amended or introduced into the Enforcement Act by the 2019 Acts. (e.g., they changed the scope of the information and data included in documents relating to enforcement, including enforcement titles, clarified the manner of conducting administrative enforcement from the joint property of the debtor and his or her spouse, revised the provisions regulating the grounds for discontinuation of enforcement proceedings at the request of the creditor and *ex officio* if the enforcement authority is also the creditor, abandoned the 7-day deadline after which the bank transfers seized amounts from the debtor's bank account for transfer to the enforcement authority, clarified the principles of description and appraisal of real estate). Additionally, the amendment modified some of the existing rules for the conduct of administrative enforcement and introduced new legal solutions aimed at streamlining the initiation and conduct of administrative enforce-

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<sup>61</sup> M. Masternak, *Zagadnienia ogólne. Rozwój prawnej regulacji postępowania egzekucyjnego*, in: T. Jędrzejewski, M. Masternak, P. Rączka, *Administracyjne postępowanie egzekucyjne*, Toruń 2020, p. 23.

<sup>62</sup> Journal of Laws of 2023, item 556. Most of its provisions have been in force since 25.03.2024.

ment and increasing its efficiency;<sup>63</sup> for example, provisions were introduced enabling enforcement of VAT receivables settled under a special procedure from an entity whose place of residence or seat is a country other than Poland and for which the country of identification is a country other than Poland, and the declaration was submitted in that country of identification. It was decided to remove the clause referring the enforcement title to administrative enforcement (with the consequence that a number of provisions of the Act relating to this clause had to be amended), the possibility was introduced of carrying out enforcement from real estate belonging to an entity that has obtained a financial benefit as a result of a legal action detrimental to the creditor if this action was deemed ineffective towards the creditor as a result of accepting *actio pauliana*, simultaneously granting this entity the right to object, and provisions on enforcement against movable property were adapted to the provisions of the customs law.

## 6. Conclusion

From the considerations contained in the article, it can be concluded that over the past 100 years, the Polish legislator has alternated between two models of the legal regulation of administrative enforcement proceedings – the first based on a two-track regulation, consisting in regulating in separate legal acts the administrative enforcement of pecuniary receivables and obligations of a non-pecuniary nature, while the second is based on a combination of provisions regulating both of these categories of obligations in a single law. The latter model has been in place since 1 January 1967, but, as indicated in the paper, starting from 2001, a dynamic process of expansion of the provisions of the Enforcement Act regulating the enforcement of pecuniary receivables occurred, which led to a far-reaching differentiation of the rules of enforce-

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<sup>63</sup> Print No. 2952, Government draft Act amending the Act on enforcement proceedings in administration and certain other acts, <https://www.sejm.gov.pl/sejm9.nsf/druk.xsp?nr=2952> (access: 5.08.2023).

ment of the two categories of obligations. As noted in the literature, in spite of the formal unification of enforcement proceedings, in reality inside a single act there exists a sort of dual legal regulation of the enforcement of pecuniary receivables and obligations of a non-monetary nature.<sup>64</sup>

The presented analysis of the evolution of the legal regulation of enforcement proceedings demonstrates the great frequency of changes to this regulation, particularly in the period since 1990, with the important fact that the modifications of the provisions did not always result from the need to adapt legal measures to changing conditions but were frequently made in order to rectify legislative mistakes made in earlier amendments. This phenomenon is highly undesirable, as frequent changes of regulations not only make it very difficult to determine the legal status in force at a particular moment but also preclude the development of a permanent practice of applying particular legal institutions.

Another apparent regularity is that the amendments to the provisions on enforcement proceedings, especially those introduced in the current Enforcement Act, relate almost exclusively to the enforcement of pecuniary receivables, whereas the provisions governing the enforcement of non-pecuniary obligations continue to apply in a relatively stable manner. As indicated in the literature, this stems from the fact that the enforcement of non-monetary obligations is rarely used in practice and thus does not play as important a role as the collection of monetary debts. It seems that it is also not without significance that the legislature perfects the provisions regulating the enforcement of monetary dues on the grounds that it is one of the instruments guaranteeing the inflow of funds to the state budget and the budgets of local government units. Focusing attention almost exclusively on this enforcement and failing to take action to improve the rules governing the enforcement of non-monetary obligations should be perceived as negative, since from the point of view of the public interest their enforcement is just as important as the enforcement of monetary

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<sup>64</sup> See M. Masternak, *Egzekucja podatkowa*, in: *System prawa finansowego*. Vol. III. *Prawo daninowe*, L. Etel (ed.), Warszawa 2010, pp. 810–811.



debts and, as practice shows, the enforcement of non-monetary obligations presents a number of challenges.

An analysis of the development of the legal regulation of enforcement proceedings reveals the desire of the legislator to regulate the course of administrative enforcement in a very detailed, even casuistic manner. This trend has significantly intensified in recent years with successive amendments to the Enforcement Act. As a result, the Act has become significantly more voluminous, making it less readable and therefore difficult to apply.<sup>65</sup> Problems in this regard are compounded by the poor level of legislative technique, with the consequence of the aforesaid need for successive amendments to correct earlier mistakes. This naturally adds to the frequency of amendments. It would seem that halting this trend would require the adoption of a new codification based on a general regulation.

On the other hand, the positive phenomena that are observable in the evolution of the legal regulation of administrative enforcement include the legislature's efforts to bring this regulation in line with the standards of the rule of law, with one of the most important being the requirement to regulate individual rights and freedoms by statute. As is evident from the evolution outlined in the article, enforcement proceedings were initially regulated by a low-ranking act such as the enforcement instructions, then the weight of regulation was shifted to ordinances with a statutory basis, and following the 1947 decree, the provisions regulating enforcement proceedings were included directly in acts of statutory rank, while until recently many important issues were still regulated by executive acts. In recent years, the norms contained in these acts have been systematically transferred to the Act.

Another positive regularity occurring in the development of the analyzed regulation is a systematic expansion of the catalogue of legal remedies available to the debtor and other participants in the proceedings. The enhancement of the protection of the rights

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<sup>65</sup> W. Chróścielewski, in: W. Chróścielewski, J.P. Tarno, *Postępowanie administracyjne i postępowanie przed sądem administracyjnym*, Warszawa 2011, pp. 290–291.

of these entities is most desirable in so far as, in the enforcement proceedings, the public administration, by applying means of state coercion, directly encroaches on the sphere of their rights and freedoms.

## SUMMARY

### Evolution of the legal regulation regarding administrative enforcement proceedings in Poland

The subject of the article is the evolution of the legal regulation of administrative enforcement proceedings. The study discusses the various stages of the development of this regulation, thanks to which it was possible to show the process of shaping the currently functioning institutions of this procedure and to formulate *de lege lata* and *de lege ferenda* conclusions.

**Keywords:** enforcement proceedings; administrative enforcement; legal regulation of enforcement proceedings

## STRESZCZENIE

### Ewolucja prawnej regulacji administracyjnego postępowania egzekucyjnego w Polsce

Przedmiotem artykułu jest ewolucja prawnej regulacji administracyjnego postępowania egzekucyjnego. W opracowaniu omówione zostały poszczególne etapy rozwoju tej regulacji, dzięki czemu możliwe było ukazanie procesu kształtowania się aktualnie funkcjonujących instytucji tego postępowania oraz sformułowanie wniosków *de lege lata* i *de lege ferenda*.

**Słowa kluczowe:** postępowanie egzekucyjne; egzekucja administracyjna; prawna regulacja postępowania egzekucyjnego

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