

## Direct coercion in Polish administrative enforcement proceedings

**Abstract:** The compulsory performance of public-law obligations is the essence of ongoing enforcement proceedings in the administration. To this end, many enforcement authorities apply statutory enforcement means, which include direct coercion. The statutory provisions set out certain restrictions on the use of this means. The limits of the use of direct coercion and certain resources of it are one of the most important conditions in the enforcement of non-pecuniary obligations. The subject of deliberations are subjective and objective limitations of the use of direct coercion and the competences of executive authorities. The study also drew attention to the principles that accompany the use of direct coercion means.

**Key words:** administration, law, administrative proceedings, administrative execution, enforcement means

### 1. Introduction

Public administration in its activities very often uses the power vested in it by the applicable law, and it is characterized by the possibility of imposing orders, prohibitions and restrictions and enforcing certain standards and obligations. The effectiveness of orders and prohibitions issued by the administration strongly depends on their execution<sup>2</sup>. It also has the right to restrict the fundamental rights, freedoms and civil liberties guaranteed by the Constitution of the Republic of Poland<sup>3</sup>, however; this occurs in specific situations specified in provisions of statutory rank. The inequality of the parties occurring in administrative proceedings places the administrative body in a definitely privileged position in relation to the other party to this relationship. As regards administrative-legal relations, at the outset, it should be pointed out that they are divided into material, procedural, litigious, supervision, in organizational dependence arrangements, or enforcement – which are the most important from the perspective of these considerations.

Enforcement relations are a type of legal procedural relations related to the existence of premises specified in substantive law for the forced execution of the indicated obligations and in compliance with the standards resulting from a normative or administrative act. Enforcement relations will always be related to specific legal relations of another type and they will arise when an authorized state body takes effective legal steps to initiate proceedings<sup>4</sup>. For this reason, they are of a different nature and depend on other legal relationships that are the basis of enforcement relations. The parties to these relations are the enforcement authority and the creditor and debtor, who are considered to be the parties to enforcement proceedings.

Administrative enforcement is a procedure for the forced execution of administrative obligations (also called compulsory proceedings), the aim of which is to bring the facts into line with the legal status<sup>5</sup>. Taking into account the findings above, it is possible to define administrative enforcement proceedings in the strict sense as a legally regulated, organized sequence of actions undertaken by the enforcement authority in cooperation with the

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<sup>2</sup> Z. Leoński, *The essence of administrative enforcement activities in the light of provisions of the Act of 17 June 1966*, in: *Legal, economic and sociological movement* 31, issue 3, Warsaw 1969, p. 55.

<sup>3</sup> *Journal of Laws* of 1997 No 78, item 483 as amended.

<sup>4</sup> R. Hauser, *Administrative Law Relations*, in: *Administrative law system. Administrative law institutions. Volume 1*, ed. R. Hauser, Z. Niewiadomski, A. Wróbel, Warsaw 2010, p. 208.

<sup>5</sup> B. Węgrzyn, *Enforcement proceedings*, in: *Police lexicon*, Szczytno 2001, p. 242.

participants in proceedings, in order to apply the state coercive measures provided in the Act, aimed at leading to the execution of the public-law obligations incumbent on them<sup>6</sup>.

In enforcement proceedings, regardless of the form in which they are initiated, i.e. ex officio or upon request, enforcement measures specified mainly in the Act of 17 June 1966 on Enforcement Proceedings in Administration<sup>7</sup> shall be applied. The statutory division into the enforcement measures for pecuniary claims and non-pecuniary obligations is at the same time related to the classification according to the nature of enforced obligations. The system of enforcement measures in both situations differs, as well as the various enforcement authorities execute them differently<sup>8</sup>. Among the enforcement measures, direct coercion has an important role, considered to be one of the most ailments but also the effective one.

Only selected enforcement authorities have the power to use direct coercion as an enforcement measure, only in particularly justified situations where the conditions for its use are met. The specificity of this enforcement measure and the possibility for the enforcement authority to interfere with fundamental human rights means that it should not be abused by those entitled thereto. Therefore; the question about the limits of the use of direct coercion as an enforcement measure should be asked precisely. The main research objective is to determine whether the catalogue of entities that may use this enforcement measure is not overly extensive. The study also draws attention to the scope of enforcement and its subject matter in a situation of direct coercion, and attempts to assess this situation. The presented research assumptions determined the content of the analysis and considerations.

## **2. Place of direct coercion among enforcement measures**

The first reference should be made undoubtedly to the position of direct coercion among the entire catalogue of enforcement measures used in administrative enforcement proceedings. For this purpose, it is necessary to indicate the measures that can be used in particular types of enforcement. This task is all the more simple because the legislator, in Article 1a point 12 in a closed catalogue assigned certain measures to the enforcement of pecuniary claims and obligations of a non-pecuniary nature. The means of enforcing pecuniary claims is enforcement: from money; from remuneration for work; from benefits from pensions and social insurance, as well as from a social pension; from bank accounts; from other pecuniary claims; from rights from financial instruments within the meaning of the regulations on trading in financial instruments, recorded on a securities account or other account, and from claims from a cash account used to service such accounts; from securities not recorded on a securities account; from a bill of exchange; from copyrights and related rights and industrial property rights; from participation in a limited liability company, from other property rights; from movables; from real estate. In the enforcement proceedings concerning obligations of a non-pecuniary nature, these are: a fine for the purpose of coercion; substitute execution; collection of movables; collection of real estate, vacation of premises and other facilities; direct coercion. The purpose of enforcement measures is to cause a state required by law if a specific obligation arises directly from it or if the obligation arises from an administrative act<sup>9</sup>.

The most drastic and troublesome means of enforcing obligations of a non-pecuniary nature include direct coercion of a satisfying nature. It applies to an obligated person who is a natural person, to persons responsible for the execution of obligations by legal persons or

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<sup>6</sup> M. Masternak, *Concepts of administrative enforcement and administrative enforcement proceedings*, in: *Administrative enforcement proceedings. On the 50th anniversary of the Act on Enforcement Proceedings in Administration*, ed. S. Fundowicz, P. Możyłowski, Radom 2017, p. 23.

<sup>7</sup> Consolidated text OJ U. of 2018, item 1314 as amended.

<sup>8</sup> Z. Leoński, *Administrative law outline*, Warsaw 2001, p. 75.

<sup>9</sup> *Ibid.*, p. 74.

organizational units, as well as to persons who – by their action or abstention from activity or conduct – constitute an obstacle to the execution of the enforced obligation. Direct coercion consists in leading to the execution of obligation to be enforced by way of threatening the use or application of directly effective measures, not excluding physical force, in order to eliminate the resistance of the obliged person and the resistance of other persons who stand in the way of the execution of obligation<sup>10</sup>. The Act on enforcement proceedings in administration specifies certain situations in which direct coercion may be used. It is used in order to make the obliged person leave the property, premises, hand over the property, abandon the activity or not to prevent another person from exercising his rights, as well as in cases where – due to the nature of obligation – it is not possible to apply other enforcement measures.

On the basis of the analysis of the provisions on the use of direct coercion in administrative enforcement proceedings, the situations in which it applies may be divided. Above all, direct coercion is used as one of the many means of enforcing obligations of a non-pecuniary nature. Thus, the aim of conducted enforcement is to fulfil the obligation through the use of this measure, under statutory conditions and obligations.

In particular, the discussed enforcement measure along with the immediate coercion specified in the Article 117 of the Act on enforcement proceedings in administration, takes place under the so-called simplified procedures. The rationale for its use is a situation in which a delay in the execution of obligation may endanger health or life or cause inability or significant impediment to the enforcement of obligation by the obliged person, as well as in other cases specified in separate provisions. Immediacy is expressed here primarily in the fact that the execution of this measure takes place after an oral summons by the enforcement authority, without a prior warning from the obliged person, without the need to perform actions taken in the course of ordinary proceedings (i.e. delivery of the warning and a copy of the enforcement title and the order to call for the execution of obligation)<sup>11</sup>. The presented procedure omits the so-called activities preceding the initiation of enforcement proceedings, which are to a large extent related to the principle of threat (e.g. delivery of a warning), while the application of this principle occurs in an oral summons from the enforcement authority.

Another situation in which there is a possibility of direct coercion is defined in the Article 151 of the Act on enforcement proceedings in administration. According to this provision, an enforcer may also apply direct coercion in the course of enforcement proceedings which have been initiated in order to apply another non-pecuniary obligation, if this enforcement measure has proved ineffective and the application of direct coercion may lead to the enforcement of obligation. In this case, no pre-initiation action shall be taken, but the enforcer shall orally warn the obliged person that he will use direct coercion if he continues to evade the obligation. The possibility of using direct coercion as a kind of supplement to other means of enforcing obligations of a non-pecuniary nature is an expression of the legislator's desire to ensure the rapid enforcement of obligations<sup>12</sup>.

Direct coercion in administrative enforcement proceedings is associated with the use of physical force, which most often takes the form of incapacitating attempts. Only selected enforcement authorities are allowed to apply this measure to the extent allowed to them. However; it should be remembered that some of these authorities have the power to apply many measures of direct coercion and even firearms.

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<sup>10</sup> Article 148 § 1 of the Act on enforcement proceedings in administration.

<sup>11</sup> A. Skoczylas, *Administrative enforcement measures*, in: *Administrative law system. Administrative procedural law. Volume 9*, ed. R. Hauser, Z. Niewiadomski, A. Wróbel, Warsaw 2010, p. 454-455.

<sup>12</sup> P. Przybysz, *Administration enforcement proceedings. Commentary. 8th edition*, Warsaw 2018, p. 153.

### 3. Nature and types of direct coercive measures

As regards direct coercive measures, it should be noted that the Act on enforcement proceedings in administration refers to them in a fragmented manner. In fact, the Acts shaping the system and functioning of enforcement bodies indicate the types and possibilities of using these means. For the reasons given, the Acts on bodies which may apply direct coercion, list the forms of coercion which these bodies may exercise<sup>13</sup>. The basic legal act relating to them, which is the Act of 24 May 2013 on Direct Coercive Measures and Firearms<sup>14</sup> should also be mentioned here.

This Act distinguishes between the use and execution of direct coercive measures and firearms. As regards the use of a direct coercive measure, it means the use of direct coercive measures against a person, the use of which is nothing other than the use of a direct coercive measure against an animal or the application of which is intended to stop, block or immobilize a vehicle or to overcome an obstacle<sup>15</sup>. The same applies to firearms, the use of which is to take a shot towards a person using penetrating ammunition, whereas use is to take a shot towards an animal, an object or any other direction which does not present a risk to the person<sup>16</sup>.

The legislator, while creating the basis for the use of indicated measures, has at the same time imposed certain conditions on this activity, such as the possibility of using or applying a direct coercive measure or firearms only to carry out the statutory tasks of the entity in which a given person serves or is employed (principle of competence). Direct coercive measures may be used after a person has been unsuccessfully summoned to behave lawfully and after being warned of his intention to use them (principle of warning)<sup>17</sup>. In justified circumstances on a statutory basis, an entitled person may use or apply more than one direct coercive measure simultaneously (principle of purpose). It is also a condition to act in a manner necessary to achieve the objectives, according to the degree of danger, using a means which will cause the least possible discomfort (principles of necessity).

An additional condition for the use of a firearm is that there must be a situation in which the means of direct coercion have proved insufficient to achieve the objectives or is not possible due to the specific circumstances. In addition, direct coercive measures or firearms should be used or applied in such a way as to cause the least possible harm and should be abandoned as soon as the objective is achieved (principle of minimizing the consequences). Due care should also be taken to ensure that they do not endanger others as well (precautionary principle). Particular care is required when using or applying a firearm as this is a final measure of particular discomfort.

The principles presented for the use or application of direct coercive measures and firearms correlate with those applicable to execution proceedings. The use of these measures must be preceded by an assessment of their application in terms of the principle of the most lenient enforcement measures, the principle of necessity and, above all, in the least oppressive manner for the obliged person<sup>18</sup>. In particular, there is the principle of purpose, according to which „the purpose of enforcement proceedings is to achieve the enforcement of an obligation, i.e. to ensure that the obliged person acts in accordance with the obligation imposed on him. Consequently, enforcement is exercised as long as the actual state of affairs

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<sup>13</sup> Z. Leoński, *Direct coercion*, in: *Enforcement proceedings in administration. Commentary, 9th edition amended and supplemented*, ed. R. Hauser, A. Skoczylas, Warsaw 2018, p. 639.

<sup>14</sup> Consolidated text OJ U. of 2018, item 1834 as amended.

<sup>15</sup> Article 4 points 6 and 9 of the Act on direct coercive measures.

<sup>16</sup> *Ibid.*, Article 9, points 7 and 10.

<sup>17</sup> Article 34(1) of the Act on direct coercive measures.

<sup>18</sup> Z. Leoński, *Direct coercion ...*, p. 639.

is not in conformity with the obligation<sup>19</sup>.” Quite strongly related to the principle of purpose is the principle expressed in Article 7 § 2 of the Act on enforcement proceedings in administration, of applying measures leading directly to the execution of obligation. The applied measure is to be adequate to the obligation to be enforced and enable its execution directly, and not by exerting pressure on the obliged person<sup>20</sup>.

On the other hand, the principles of necessity mean that the use of an enforcement measure is inadmissible when a pecuniary or non-pecuniary obligation has been performed or has become devoid of purpose<sup>21</sup>. The principle of warning should also be bear in mind, aimed at the voluntary enforcement of an obligation by means of a warning of the consequences of non-execution. The example of this principle shows that the Act has assigned an educational role to the body and other state entities acting as a creditor in relation to the debtor<sup>22</sup>.

Among the general principles of the enforcement procedure in administration, the principle of the most lenient enforcement measure also has its place, which is related to the principle of purpose. Jointly, they are referred to as the principle of reasonable conduct<sup>23</sup>. Enforcement measures are not about making the debtor suffer, but about forcing him to comply with the obligation by the most lenient enforcement measure<sup>24</sup>. It is important in the case of direct coercion, since its use is certainly a last resort and not one of the least intimidating but most effective. It is appropriate to express the view that the direct coercion should be used in such a way as to cause the least possible discomfort to the person to whom it applies.

The provisions of the Act assign to particular types of the direct coercive measures, appropriate cases of their use or application<sup>25</sup>. Direct coercive measures may be used or applied if one or more of the following measures must be taken: 1) to enforce the legally required conduct in accordance with an order issued by an authorized person; 2) to repulse a direct, unlawful assassination attempt on the life, health or freedom of an authorized person or another person; 3) to prevent activities aimed directly at assassination of the life, health or freedom of an authorized person or another person; 4) to prevent a violation of public order or security; 5) to prevent a direct attack on areas, objects or devices protected by an authorized person; 6) protect order or security in the areas or facilities protected by an authorized person; 7) prevent an attack on the inviolability of the state border within the meaning of the Act of 12 October 1990 on the Protection of the State Border; 8) prevent the destruction of property; 9) ensure the safety of a convoy or lead; 10) apprehend a person, thwart his escape or pursuit; 11) stop a person, thwart escape or pursuit; 12) overcome passive resistance; 13) overcome active resistance; 14) prevent activities aimed at self-aggression<sup>26</sup>. In the catalogue of presented cases there are also situations appropriate for administrative executions of obligations of a non-pecuniary nature, which confirms the assumption of the possibility to use various measures of direct coercion.

In order to further elaborate deliberations on the direct coercive measures, attention should be drawn to the catalogue of these measures which is included in the Article 12(1) of

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<sup>19</sup> A. Skoczylas, *Typology of the rules of enforcement proceedings*, in: *System of administrative law. Administrative procedural law. Volume 9*, ed. R. Hauser, Z. Niewiadomski, A. Wróbel, Warsaw 2010, p. 397.

<sup>20</sup> Z.R. Kmiecik, *Administrative proceedings, enforcement proceedings in administration and court-administrative proceedings*, 4th edition, Warsaw 2017, p. 254.

<sup>21</sup> Article 7 § 3 of the Act on enforcement proceedings in administration.

<sup>22</sup> J. Służewski, *Administrative proceedings*, Warsaw 1974, p. 165.

<sup>23</sup> Z.R. Kmiecik, *Administrative proceedings ...*, p. 254.

<sup>24</sup> J. Służewski, *Administrative proceedings*, Warsaw 1974, p. 165.

<sup>25</sup> K. Świerczewski, W. Biedrzycki, *Cases of use or application of direct coercive measures*, in: *The use or application of direct coercive measures by policemen*, ed. L. Dyduch, K. Świerczewski, W. Biedrzycki, Legionowo 2014, p. 30.

<sup>26</sup> Article 11 of the Act on direct coercive measures.

the Act on direct coercive measures. Direct coercive measures are: 1) physical force in a form of techniques: (a) transport, (b) defence, (c) attack, (d) incapacitation; 2) handcuffs: a) put on arms, b) put on legs, c) combined; 3) straitjacket; 4) incapacitating belt; 5) incapacitating net; 6) safety helmet; 7) service truncheon; 8) water-based incapacitating agents; 9) police dog; 10) police horse; 11) non-penetrative bullets; 12) chemical incapacitating agents in a form of: (a) hand throwers of incapacitating substances; (b) rucksack throwers of incapacitating substances; (c) tear grenades; (d) other devices designed to throw incapacitating substances; (13) objects designed to incapacitate persons by means of electricity; (14) a safety cell; (15) an isolation chamber; 16) isolation room; 17) road spikes and other means for stopping and immobilizing motor vehicles; 18) police vehicles; 19) means for overcoming building closures and other obstacles, including explosives; 20) pyrotechnics with stunning or dazzling properties.

An analysis of the measures presented shows a certain hierarchy depending on the degree of discomfort or effect they may have. They start with the most gentle means of direct coercion, i.e. physical force, then include increasingly discomforting, and end with the most discomforting means of direct coercion, i.e. means intended for overcoming building closures and other obstacles and pyrotechnic means with stunning or dazzling properties<sup>27</sup>. Despite a kind of closed catalogue of direct coercive measures, the legislator allowed their use and application only by selected entities, usually classified as uniformed services. There are also restrictions as to persons to whom the use of these means is permitted in certain situations.

#### **4. Subjective and objective limits**

The use of coercion requires that the subjective and objective limits of administrative interference must be observed<sup>28</sup>. With respect to the enforcement of non-pecuniary benefits, the rule is that the enforcement authority is the government administration body of the first instance and local government units' authorities with respect to their own tasks and commissioned tasks with respect to decisions and provisions issued by these authorities<sup>29</sup>. The legislator, striving to define a fairly consistent catalogue of enforcement bodies, has included in the provisions of the Act on enforcement proceedings in administration a list of entities that may undertake actions as these bodies. „The enforcement authority for administrative enforcement of non-pecuniary obligations is: 1) a voivode; 2) a competent authority of the local government unit with respect to its own tasks, commissioned tasks and tasks in the field of government administration and obligations arising from decisions and provisions in the field of public administration issued by local government organizational units; 3) the head of a voivodeship service, inspection or guard with respect to obligations arising from decisions and provisions issued on its own behalf or on behalf of a voivode; 4) the head of a poviat service, inspection or guard with respect to obligations arising from decisions and provisions issued within its jurisdiction. Moreover, in cases defined by specific provisions, each body of the Police, Internal Security Agency, Intelligence Agency or Border Guard, the President of the Office for Personal Data Protection, the body of the State Labour Inspectorate issuing a decision in the first instance, the fire brigade body directing the rescue operation, as well as other bodies appointed to protect peace, safety, order, public health or social property shall act as an enforcement body with respect to administrative enforcement of obligations of a non-pecuniary nature. The administrative enforcement body for obligations of a non-pecuniary

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<sup>27</sup> L. Dyduch, *Types of direct coercive measures*, in: *The use or application of direct coercive measures by policemen*, ed. L. Dyduch, K. Świerczewski, W. Biedrzycki, Legionowo 2014, p. 17.

<sup>28</sup> L. Klat-Wertelecka, *Limits of the use of execution coercion in administration*, in: *Between tradition and future in the study of administrative law, Jubilee Book dedicated to Professor Jan Boci*, ed. J. Supernat, Wrocław 2009, p. 307.

<sup>29</sup> Z. Leoński, *Administrative ...*, p. 75-76.

nature resulting from government administration decisions issued by state enterprises and other state organizational units, cooperatives, as well as by associations, professional and local government organizations and other social organizations is the voivode<sup>30</sup>.”

In the case of immediate coercion, the possibility to apply this measure has been limited exclusively to the bodies of the Police, the Internal Security Agency, the Intelligence Agency or the Border Guard, the President of the Office for Personal Data Protection, the body of the State Labour Inspectorate issuing the decision in the first instance, the fire brigade body in charge of the rescue operation, as well as other bodies which have been appointed to protect peace, safety, order, public health or social property.

Such an interpretation is not exhaustive, as direct coercion is related to the possibility of applying specific measures. The Act on Direct Coercive Measures and Firearms defines the entities whose representatives may use direct coercive measures. Authorized to use or apply direct coercive measures and firearms are: officers of the Internal Security Agency; officers of the Foreign Intelligence Agency; officers of the State Protection Service; officers of the Customs and Fiscal Service; officers of the Central Anti-Corruption Bureau; guards of the State Hunting Service; guards of the State Fisheries Service; police officers; officers and soldiers of the Military Counterintelligence Service; officers of the Prison Service; officers and soldiers of the Military Intelligence Service; Municipal guards; Border Guard officers; Forest Guard officers; Marshal's Guard officers; Railway Security Guards; Park Guard officers; Military Gendarmerie or military policing officers; security personnel authorized to use or apply direct coercion or firearms on the basis of the provisions of the Act of 22 August 1997 on the protection of persons and property; inspectors of the Road Transport Inspection. Such rights are also held by members of the security service referred to in the Act of 20 March 2009 on the safety of mass events and employees of correctional facilities, youth hostels or youth education centres<sup>31</sup>.

Only the comparison of the body catalogue specified in the Act on enforcement proceedings in administration and the Act on direct coercive measures enables to concretize those appropriate for the application of direct coercive measures in enforcement proceedings in administration. In other words, it can be said that not all enforcement authorities can use direct coercion and not all entities that can use direct coercive measures. A special role in this group is played by a voivode, who alone is not entitled to apply direct coercive measures. However; in accordance with Article 5(1) of the Act of 6 April 1990 on the Police<sup>32</sup>, he is a government administration body in the area of a voivodship competent for the protection of human safety and maintenance of public safety and order, which may act with the assistance of a voivodship police chief. In this situation, it is the police officer acting on behalf of a voivode who may apply direct coercive measures.

The use of direct coercive measures may take place in cases specified in the Act on direct coercive measures and by authorized entities. However; the law provides the certain limits on the application of these measures to specific persons. These restrictions are related to e.g. exclusions from the application of the provisions of the Act on enforcement proceedings in the administration and concern persons who, in accordance with Article 14 § 1, have diplomatic privileges and immunities as well as, to the extent provided for by acts, agreements or generally established international customs, are not subject to the jurisdiction of Polish authorities. No administrative enforcement may be carried out against them, unless it is a matter in which they are subject to the jurisdiction of Polish administrative authorities.

Another group to which limits on the use of direct coercion refer are soldiers in active military service or officers of the Police, the State Protection Service, the Internal Security

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<sup>30</sup> Article 20 § 1-3 of the Act on enforcement proceedings in administration.

<sup>31</sup> Article 2(1) of the Act on direct coercive measures.

<sup>32</sup> Consolidated text OJ U. of 2019, item 161.

Agency, the Foreign Intelligence Agency, the Military Counterintelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau or the Border Guard, which may be applied only by the Military Police or the military policing authority or an authority of the Police, the State Protection Service, the Internal Security Agency, the Foreign Intelligence Agency, the Military Counterintelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau or the Border Guard<sup>33</sup>. If there is a need for an immediate execution of enforced obligation due to sanitary or other social reasons, when the aforementioned authorities do not have an execution on the spot, another enforcement authority may carry out the execution against these persons.

The personal prohibitions on the use of direct coercive measures also result from Article 9 of the Act on Direct Coercive Measures and Firearms. Persons subject to these restrictions include: women with visible pregnancy, persons whose appearance indicates an age of up to 13 years, and persons with visible disabilities. In relation to these persons, the entitled person may only use physical force in the form of incapacitation techniques, but is not allowed to use other means. The personal prohibitions on the use of direct coercive measures are referred to as relative prohibitions as they allow for an exception justified by the circumstances<sup>34</sup>. In a situation where it is necessary to repel a direct, unlawful attempt on the life or health of an authorized person or another person, and the use of physical force is insufficient or impossible, the authorized person may use other means of direct coercion or firearms.

As regards restrictions on the use of direct coercion, it is important not to forget the prohibitions in question, which are derived from statutory legal standards. Prohibitions on the use or application of direct coercive measures shall be absolute in nature and shall be designed to set certain strict limits on the use or application of direct coercive measures in certain ways or in certain situations in order to protect the life and health of persons against whom they are used or applied and to ensure that their use or application is appropriate and necessary<sup>35</sup>.

## 5. Final conclusions

The limits of using direct coercion as an enforcement measure are set by the provisions of the Act on Enforcement in Administration and other acts of statutory rank. The Act regulates the scope and mode of application of this enforcement measure as well as the authorities competent for it. In determining the limits of the use of enforcement coercion, in addition to the criterion of obligation, the criterion of type and content of an administrative act is also helpful<sup>36</sup>. The basis for the use of direct coercion may be individual or general acts specified in Articles 3 to 4 of the Act on enforcement proceedings in administration.

As regards subjective restrictions, these are mainly related to the competence of individual enforcement authorities to carry out specific enforcement and execute a particular enforcement measure. As already indicated above, the catalogue of these authorities results from Article 20 of the Act on enforcement proceedings in administration and in the case of exercising a specific measure of direct coercion under the Act on direct coercive measures. In addition to the legal requirements, the point is that this ailing measure should be used by entities who are professionally prepared. It is the prerogative of the public administration to

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<sup>33</sup> Article 153 § 1 of the Act on enforcement proceedings in administration.

<sup>34</sup> L. Dyduch, W. Biedrzycki, *Prohibitions on the use or application of direct coercive measures*, in: *The use or application of direct coercive measures by policemen*, ed. L. Dyduch, K. Świerczewski, W. Biedrzycki, Legionowo 2014, p. 24.

<sup>35</sup> *Ibid.*, p. 24.

<sup>36</sup> L. Klat-Wertelecka, *Limits of coercion ...*, p. 308.



use state coercion to enforce an administrative obligation<sup>37</sup>. The competence of public administration, i.e. the one that has been endowed with power, is noticeable in this respect, while entities classified as private administration can not use enforcement measures.

On the other hand, there are entities against which enforcement is carried out, i.e. the whole circle of obliged persons. In the case of direct coercion, the obliged person is a natural person or a person representing a legal person or an organizational unit. In special situations, this coercion is also imposed on persons who are not obliged and who prevent or hinder effective execution. Margins of the use of direct coercion are also determined by the limits of the Polish executive authority.

The use of direct coercion for the protection of fundamental human rights and freedoms should be carried out only as a last resort, in accordance with prescribed procedures. What seems to be extremely important is the observance of the rules of execution proceedings and those which set out the prohibitions of direct coercive measures.

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<sup>37</sup> E. Pierzchała, *Legal and enforcement relations in administrative enforcement proceedings*, in: *Administrative enforcement proceedings. On the 50th anniversary of the Act on Enforcement Proceedings in Administration*, ed. S. Fundowicz, P. Możyłowski, Radom 2017, p. 47.

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