

SELECTED PROBLEMS OF THE EFFECTIVENESS OF ADMINISTRATIVE ENFORCEMENT AND WAYS OF SOLVING THEM IN POLAND

In the Polish legal systems there are two execution systems which make it possible to recover financial debts from an obligor who fails to perform his or her obligations. In the case of civil-law obligations, a creditor is entitled to execute the obligation by court execution performed by common courts and court enforcement officers. Regulatory liabilities, on the other hand, towards the Treasury and local government units are executed by way of administrative enforcement. The act which regulates the rules and ways of recovering such liabilities¹, lists many executive bodies entitled to such execution. Authorities which have the power to employ coercive measures towards people who fail to perform their public obligations are both government administration bodies as well as local government bodies, though the greatest powers in recovering liabilities and their securing were put into the hands of heads of tax offices.

The efficiency of recovering public liabilities by way of administrative coercion is one of the elements which impact the condition of the Polish state in terms of public control it exerts. Quick and effective administrative response, should there be a failure to perform an obligation, influences the degree in which individuals, legal persons and other organization units perform their obligations voluntarily. The role of enforcement proceedings is not only to recover debts but also to educate. The nature of the proceedings is that people who do not pay their debts for various reasons may face proceedings during which enforcement bodies are entitled to use coercive measures. The employment of such measures may result in depriving such people of the right to manage their assets, as well as in forfeiting their ownership rights. Inevitability of enforcement shapes the attitudes of such people.

The Constitutional Tribunal, in its decision of 26 November 2007² praised the legal solutions regarding the formation of legal instruments facilitating security and

1 Act of 17 June 1966 on enforcement proceedings in administration (Journal of Laws of 2005, no. 229, item 1954 as amended.)

2 Tribunal's decision of 26 November 2007, case reference no. P 24/06

enforcement of regulatory liabilities; it pointed out that the Polish legislator granted the Treasury and local government units the most privileged status in enforcement proceedings as compared to other creditors who have to use court enforcement, which is more formalized, time-consuming and costly than administrative enforcement. Because it is a privilege to commence administrative enforcement and security on the basis of an enforcement order (order of security) issued by the creditor who is at the same time an enforcement body, obtain information on the real estate and ownership rights by way of a proper statement filed by the taxpayer, and then to have the possibility to secure the execution of debt recovery on the assets of other people that the taxpayer, be it his or her spouse, third parties can also be jointly liable for tax arrears of the tax payer with all their assets in the cases determined in the Tax Ordinance Act³. The act also introduced the possibility of securing tax liabilities in the forms indicated by the taxpayer, on his or her initiative.

The legal instruments indicated above, used at the right moment during control, security and enforcement proceedings are, in the opinion of the Constitutional Tribunal, a sufficient guarantee to enforce the taxpayer's performance of his or her fiscal duties.

Despite these legal solutions, the effectiveness indicators of administrative enforcement in the case of tax arrears, which are state budgetary revenue, are not satisfactory. In the recent years, there was a downward tendency, and in 2003-2007 they amounted to respectively: 28.58%, 25.38%, 23.18%, 23.39% and 24.22%⁴.

There are many negative factors which directly impact the effectiveness of administrative enforcement in Poland. The limited space of this paper makes it impossible to discuss them in detail. Therefore only the most important of them will be covered.

When analysing enforcement effectiveness (security) two groups of factors which impact the effectiveness indicator must be mentioned. The first group consists of internal factors; eliminating them lies in the power of public administration bodies (as part of changes in the organization, or actions initiating legislative changes in regulations determining the system, tasks of enforcement bodies, or regulations changing or introducing new legal instruments). There are also a number of external factors in Poland which do not fall under the influence of the public administration organs. They exist irrespective of actions undertaken by these bodies and are the result of deteriorating economic and financial situation of debtors, who are unable to perform their public obligations. Such a situation stems from economic and social changes which took place in Poland in the 1990s. At that time many companies were

3 Act of 29 September 1997 Tax Ordinance (Journal of Laws of 2005, No. 8, item 60 as amended)

4 Statistical data of the Finance Dept., www.mf.gov.pl

liquidated or stopped trading. Liabilities of these entities became very difficult to enforce due to the cessation of legal existence of such entities or lack of assets which could undergo administrative enforcement.

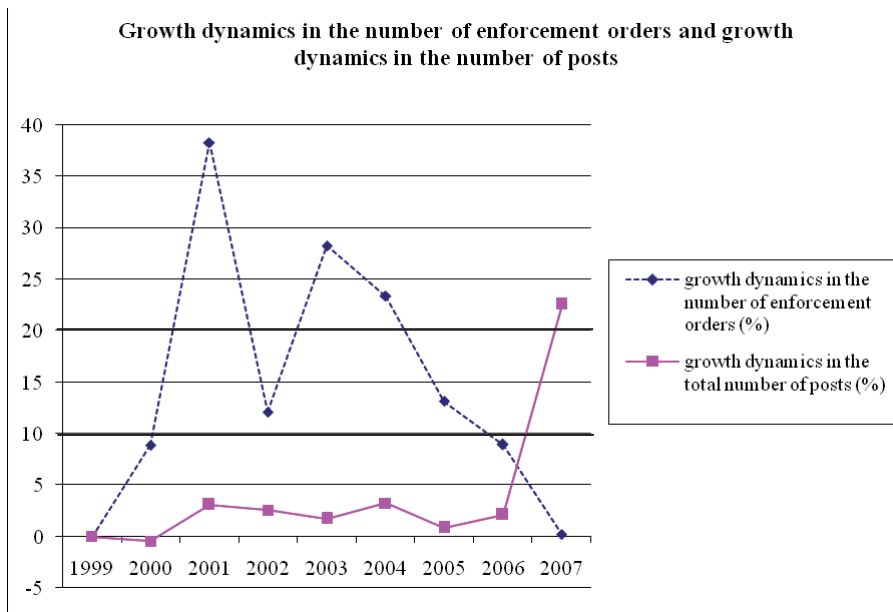
Recently, more and more cases have been recorded of running a business activity with the use of movable property which is not owned by the obligor but belongs to a third party with whom e.g. a leasing contract was signed. In such cases it is impossible to commence enforcement against assets held by the obligor.

In the case of natural persons the main reason for the decline in effectiveness of administrative enforcement are frequent changes in the place of residence or stay or the place of running a business (also abroad) without updating address data. Such people are considered “difficult debtors”, who require an intensive search of assets in the whole country and undertaking a number of time-consuming steps in this respect.

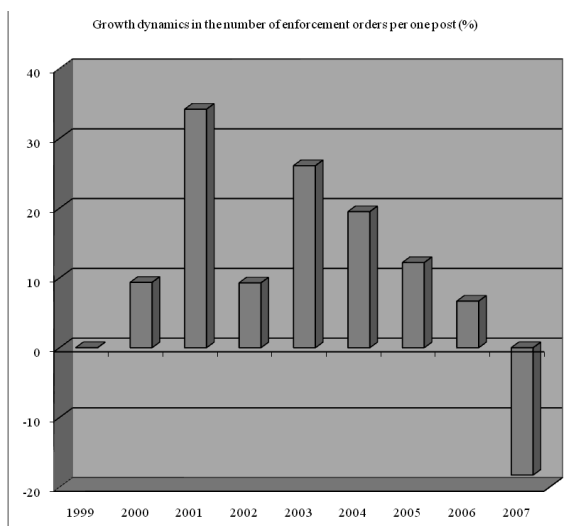
Another important reason for low effectiveness of enforcement against natural persons is the absence of assets to be executed. This is confirmed by reports prepared by enforcement bodies on the property status and by the results of court proceedings on disclosure of property. Also, garnishment of salary, bank account and other cash liabilities is futile as obligors usually collect salaries and benefits in exempt amounts. In the case of attachment of non-exempt property, it turns out that it has no auction value. Frequently, in the case of non-exempt property, a bank lien is established on real estate (particularly on obligor’s production facilities) and this effectively makes execution against the asset impossible or difficult.

In the case of real estate of a significant market value, one of obligor’s most attractive assets from the perspective of administrative enforcement, the legal framework of an enforcement measure against real estate does not allow it to be used at any time in the course of proceedings. The provisions of the act on enforcement proceedings in administration allow for significant nuisance caused by this enforcement measure to an obligor, and they allow real estate to be executed upon only if the use of other enforcement measures is impossible or turns out to be ineffective. Enforcement against this asset is then delayed, and consequently bringing the obligor to the compulsory performance of public obligations takes years.

The main problem of administrative enforcement, which remains in the realm of competences of relevant authorities, is the significant increase in the number of enforcement orders as compared to the number of posts in enforcement services, which is confirmed by the graphs below.



Taking into consideration the data from 1999-2007, it should be noted that while the growth dynamics of posts in administrative enforcement was 39.46%, the growth dynamics of enforcement orders in the same period was 229.67%. To illustrate this negative phenomenon it should be pointed out that at the beginning of the period in question, i.e. 1999, each employee had 1 792 enforcement orders to carry out, whereas in 2007 the number went up to 4 478 (in 2006 – 5 183 enforcement orders).



The reason for the fall in effectiveness of enforcement services was the lack of a staff policy which would ensure a larger number of posts while taking into consideration a significant growth in the number of tasks of enforcement services caused, among others, by changes in law which resulted in transferring more and more new liabilities from court enforcement to administrative enforcement, which formed the revenue of state budget and local government units.

Another obstacle in the proper, quick and effective operation of enforcement authorities were legal barriers laid down by the act on enforcement proceedings in administration. The act was introduced more than 40 years ago, and despite numerous amendments, it still contains solutions inadequate to the current social and economic development. The procedures regulated by the act are complicated and the provisions which regulate them raise a lot of interpretation doubts. Also provisions regulating the security of regulatory obligations and strictly formulated premises for security are an obstacle in implementing this legal instrument, despite the fact that it is a guarantee of performing public obligation in the future, should the need to commence enforcement proceedings arise. The data provided in the table below clearly indicate the disproportion between the low number of cases in which security was established and the number of cases with enforcement proceedings conducted at the same time.

Period	Number of enforcement proceedings	Number of security proceedings
2003	12 800 000	1509
2004	15 747 569	3246
2005	17 797 665	4820
2006	19 333 369	5310
2007	19 337 246	6220

Effectiveness of administrative enforcement is also subject to the impact from legal solutions included in other legal acts, imposing on heads of tax offices the duty to carry out other tasks within the scope of regulations on the enforcement proceedings in administration, such as seizure of moveable assets by the Treasury on the basis of courts and prosecutors' decisions, elimination of uncollected deposits, cases of securing the inheritance and inventory instigated by court orders, security on property of suspects upon the request of prosecutors and courts.

Internal barriers in the effectiveness of administrative enforcement also include the lack of direct information on the property subject to enforcement and its location or the place of obligor's stay. Enforcement bodies have no access to data bases of external institutions, registers of means of transport, real estate, population, business

activity as well as land and mortgage registers which would illustrate the legal state of real estate in Poland. Obtaining information from these data bases takes time and requires the preparation of written inquiries to a variety of institutions, whereas long time of awaiting replies has an adverse impact on the speed and efficiency of the operation of the enforcement body.

What is more, IT systems at enforcement departments are insufficient in terms of current and fast service of enforcement services, nor are they adapted to ever-changing legal provisions.

Consequently, due to the number and constant growth of tasks performed by enforcement bodies, and most of all due to the significant growth in the number of enforcement orders in the recent years, it is necessary to determine the directions of actions in terms of changes in the organization, system and legislation, which would result in improved recovery of debts unpaid to the Treasury and local government units.

I. Undoubtedly, increasing the staff number in enforcement services will contribute to faster and more effective enforcement proceedings, and will eliminate the necessity to selectively deal with cases. It will also be possible for enforcement authorities to look for obligor's non-exempt assets. In 2007, the number of tax office employees working in the enforcement of tax arrears was significantly raised and it brought measurable results in the form of a higher indicator of enforcement effectiveness in the whole country.

Regardless of the necessity to undertake immediate measures in this respect, it is also important to create such conditions that the staff performing administrative enforcement tasks is properly qualified. Carrying out enforcement tasks, as well as issuing decisions in the enforcement proceedings, requires not only the knowledge of provisions regulating the principles and ways of performing administrative enforcement, but also the knowledge of other law branches, e.g. civil law, civil proceedings, law on bankruptcy and rehabilitation.

Coercive measures (enforcement measures) which indirectly limit the citizen's ownership right and can even lead to their deprivation of such a right should be implemented with particular diligence and with the best legal knowledge in order not to expose the person against whose property enforcement is performed to damage resulting from unlawful instigation or performance of administrative enforcement. This is why the claims of E. Ruśkowski⁵ to conduct the policy of education and financing the education of staff in fiscal administration, including establishing a fiscal school with accreditation of a higher learning institution are still valid.

5 E. Ruśkowski, Wybrane problemy efektywności administracji skarbowej w świetle przeprowadzonych badań, (in:) Przyjazna administracja skarbowa, Warsaw, 2007, p. 25 and the following page.

Another important step is to implement changes in the payroll system of the enforcement department employees depending on the amount and quality of work, which would allow for the work load and effort put in dealing with a case.

II. To improve the effectiveness of administrative enforcement it is also necessary to change the rules of law in simplifying administrative enforcement and increasing its effectiveness, e.g. enforcement against common assets of spouses and against things and property rights which are the subject of property security (compulsory mortgage and tax lien), making the use of enforcement measure against real estate more efficient and ensuring a proper cooperation between enforcement bodies and creditors who apply the enforcement orders for implementation. Changes in the rules of law regulating administrative enforcement should take place in a much wider scope, taking into account e.g. the fast development of capital market in Poland. It would also be necessary to create new legal instruments – enforcement measures, as well as legal basis for securing regulatory liabilities in a much wider scope. In the opinion of M. Staniszewski⁶, a measure which would enforce performance of tax obligations much more effectively would be the introduction of orders which would enforce the performance of the obligation. Repayment of the liability in instalments would be an enforcement measure and would allow eliminating arduous and costly proceedings ending with a decision issued as part of administrative recognition. Another solution would also be the introduction of bans, e.g. with respect to running a business activity by such entities whose liabilities keep growing, where as an obligor who fails to pay a fixed penalty notice would lose his or her driving licence.

III. It would also be necessary to introduce system solutions providing the enforcement staff with computer access to data bases of external institutions holding information about the obligor's assets, e.g. Central Vehicle and Driver Register, National Court Register, mortgage register, or facilitating obtaining information about the obligor's assets at e.g. accounting bureaus with respect to clients, banks with respect to credit contracts and their collaterals. It would also be helpful to create an IT data base about tax payers and their assets, or e.g. a central register of bank accounts.

IV. The priority task of authorities responsible for effective operation of enforcement services is changing the IT system of enforcement services in the shortest time possible. Work in this respect is crucial in order to adapt the system to the current needs of administrative enforcement with the use of modern technologies, through its development and improvement, so that it is possible to comprehensively deal with enforcement and securing proceedings as well as other tasks performed by enforcement units the result of which is to increase revenue of the state budget.

6 M. Staniszewski, *Zasada efektywności opodatkowania w działalności administracji podatkowej w Polsce*, Jarocin, 2007, p. 176 and the following.

Simultaneously with the computerization of enforcement departments, it is necessary to provide the employees with modern computer equipment, palmtops or laptops which would allow them to supply information on actions taken in the field, KalWin software and portable payment terminals.

Another thing that has been considered is the concept of separating administrative enforcement from tax offices and creating an independent department of public administration – offices of administrative enforcement, which would take over the tasks of all administrative enforcement bodies (heads of Social Security Offices, directors of customs chambers, bodies of communes with the status of a town and communes which are part of Warsaw district as well as other authorities performing tasks of administrative enforcement).

Streszczenie

Niniejszy artykuł poświęcony został głównym problemom organów egzekucji administracyjnej, których podstawowym zadaniem jest dochodzenie realizacji zobowiązań tych osób, które posiadają zaległości podatkowe w zakresie podatków państwowych oraz samorządowych. Analiza czynników, które bezpośrednio negatywnie wpływają na efektywność egzekucji administracyjnej można podzielić na czynniki wewnętrzne, których eliminacja jest możliwa w ramach działań samych organów administracyjnych, oraz czynniki zewnętrzne, które są powodowane pogarszającą się finansową i ekonomiczną sytuacją dłużników i która wynika z gospodarczo-społecznych przemian w Polsce w latach dziewięćdziesiątych. Identyfikacja problemów utrudniających egzekucję administracyjną jest warunkiem wstępnym do wprowadzenia nowych rozwiązań w całym systemie.