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Co-ordination and co-operation in public administration in the light of the law

Abstract

There are some typical relations that can be observed in public administration, including management, supervision, control, co-ordination and co-operation. The latter two are seldom subject to scrutiny by administration law academics. The purpose of this article is to initiate a discussion on filling this gap. In most cases, co-ordination is performed in connection with management, supervision or control. This type of co-ordination can be described as functional. However, independent co-ordination also exists. Due to the limited number of positive law regulations regarding this type of co-ordination, it is usually limited to the co-ordinating body applying non-executive measures. The co-ordination relationship in administration law is an unusual type. At least three entities are necessary for such a relationship to exist, namely a co-ordinator and two co-ordinated parties. The analysis of co-operation in public administration is possible upon considering the principle of general co-operation as a separate one. This principle could have the status of a general administration law principle, but the positive law does not currently formulate this principle directly. However, it can be derived from various applicable rules, including rules of constitutional importance. This principle dictates that all public administration entities must co-operate with each other. The article attempts to define forms of co-operation, indicating their diversity. Many issues related to co-ordination and co-operation in administration still require scientific explanation. A further stage should involve regulating these activities within the framework of the positive law. This could be implemented by future act – the "General Provisions of Administrative Law".

Keywords: Law, public administration, co-ordination, co-operation, administration law relationships

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Typical relations (legal situations) taking place in public administration include: control, supervision and management. The former two relations have been often subject to scrutiny in the science of administrative and administration law academics for a long time. Management is researched more rarely, which is associated with a smaller scope of its occurrence in the Polish administration. It is distinguished by a significant degree of decentralisation, and therefore the areas in which management could appear are quite few. The management is typical of the centralised state system and its administration.[2] The science of law seems to refer to phenomena such as co-ordination and co-operation even less often. They are often explained from the point of view of science of administration or the theory of organisation. At the same time, they demonstrate a significant separation from the three legal situations listed first. This is why they deserve some attention. This research paper attempts to look at them primarily from the point of view of the science of administrative law, using the scientific outputs of administration science rather for support only.

Co-ordination and co-operation phenomena are common. They can be found in all areas of public and private life. This paper intends to focus on manifestations of co-ordination and co-operation in public administration, and even more strictly – in its internal sphere. This is where co-ordination and co-operation acquire special features, and thus become extremely interesting for considerations on the political system.

Co-ordination in the research of administrative law is viewed very broadly, so that it covers all forms of co-operation between entities of administrative law.[3] At the other extreme there is an attempt to bring co-ordination to one of the legal means of action of administrative bodies[4]. The weakness of each of these points of view

[2] The Spanish administration law distinguishes the democratic administration (*la Administración democrática*) and the bureaucratic administration (*la Administración burocrática*), which is opposed to it. C. Escuin Palop: *Curso de Derecho administrativo*, Valencia 2004, p. 299–301.

[3] See J. Starościak: *Administracja. Zagadnienia teorii i praktyki*, Warszawa 1974, Chapter V.

[4] This approach is noticed by Małgorzata Stahl, but she refers to it with scepticism. Cf. M. Stahl: *Szczególne prawne formy działania organów administracji*, [in:] *System prawa administracyjnego*, Vol. 5, Warszawa 2013, p. 362. Similarly: M.A. Waligórski: *Koordynacja – sposób administrowania czy prawna forma działania administracji*, [in:] J. Boć, A. Chajbowicz (eds.), *Nowe problemy badawcze w teorii prawa administracyjnego*, Wrocław 2009, pp. 477.

seems to be its extremity. The former one is too broad and the latter one is too narrow. Therefore, an intermediate point of view should be chosen. I would consider it a promising one if it viewed co-ordination as a kind of administrative law situation. This way, it would be possible to find a "common denominator" for co-ordination on the one hand, and for control, supervision and management on the other, with the administrative law situation understood as a phenomenon broader than a legal relationship (adopting the Wrocław School suggestions).[5] Just as a legal institution is a set of related legal norms, the administrative law situation may constitute a set of related administrative law relations. However, it also includes other components, namely potential legal relationships[6] and certain factual contexts. Without the latter ones, administrative relations cannot exist.[7] The administration process is not restricted to creating legal relations, but is aimed at relying on certain desirable facts.

Trying to explain the essence of co-ordination, one could start with the origin and meaning of the term itself. It comes from Latin. The verb *ordinare* means "to order", and the prefix "co-" means "jointly". Therefore, co-ordination is a measure aimed at organising someone's behaviour so that they are not in contradiction with the behaviours of another entity that is also subject to co-ordination.[8] Hence, it can be concluded that at least two entities must be subject to co-ordination. Co-ordination will be about ensuring mutual harmony of their behaviours. There must also be a third entity – a co-ordinator.[9] Such understanding of co-ordination corresponds to the prevailing practice of colloquial language. Such an understanding is also usually referred to by the positive law in its regulations. It can be exemplified by Article 148(5) of the Constitution of the Republic of Poland, according to which the Prime Minister co-ordinates the work of the members of the Council of Ministers.

Therefore, it is not difficult to notice that the legal relations of co-ordination are, in a sense, atypical under the administrative law. It is because we are used to a situation where the legal relationship in administrative law covers two different entities: a superior one, which is the holder of public authority (the administering one) and a subordinate entity (the administered one). Such a typical setting takes place in control, supervision and management. The setting is the same despite the profound differences between these three legal situations. In case of co-ordination, it must

5 J. Boć (ed.), *Prawo administracyjne*, Wrocław 2007, p. 366.

6 J. Filipek, *Stosunek administracyjnoprawny*, Kraków 1968, p. 88.

7 Idem, *Prawo administracyjne. Instytucje ogólne*, *Część II*, Kraków 2001, p. 25.

8 "In general, the purpose of co-ordination is to harmonise the measures of various entities or groups of entities to achieve the intended goals" (M.A. Waligórski, op. cit., p. 478).

9 Ibidem, p. 480.

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be assumed that we have to do with a specific variation of an administrative law relationship. It is about a relationship in which several entities must appear as administered entities (at least two). This makes the legal relationships between these entities (content of legal relationship) quite complex. They will be different between the co-ordinating body and the co-ordinated entities, and different between the co-ordinated entities themselves.

Interestingly, the administrative law relationships typical of co-ordination seem to be similar (in terms of structure) to the litigation and administrative relationship described by Jerzy Starościak.[10] It takes place between an administrative court on the one hand and a public administration body that issued a contested administrative act and the entity that is recipient addressee of such an act on the other. The difference arises in how a legal relationship is established. The co-ordination relationship is established on the initiative of the co-ordinating body, whereas an administrative court does not initiate litigation and administrative relationships.

The legal relationship between the co-ordinating body (co-ordinator) and the co-ordinated entity is in a sense a primary relationship. It is established earlier than the legal relationships of co-ordinated entities. The establishment of relationships between individual co-ordinated entities depends on its existence. Also the content of the relationships (legal, and often also factual ones) between co-ordinated entities depends on what the initial relationship between the co-ordinator and the co-ordinated entities contained. It depends on the content of the means of co-ordination used. There must be consistency between the relationships of both types – vertical and horizontal ones.

One can also imagine a case in which no rights or obligations arise in the co-ordination between the co-ordinated entities. Only factual relationships will appear. This would be the case if, for example, the co-ordinating body ordered the co-ordinated entities to behave in a certain way, and the co-ordinated entities would not have a legal claim that such behaviour would actually take place. In such a case, one could speak of establishing only "ordinary" (vertical) administrative law relationships with the superior and subordinate entity in each case. However, it should be pointed out that these relationships are established due to a common factual basis. Therefore, there is a somewhat indirect relation between the individual legal relationships between the co-ordinating body and each co-ordinated entity. There must be a degree of compatibility between these relationships.

Legal provisions forming a co-ordination relationship can be recognised in two ways. The first type directly provides for the co-ordination of behaviour of specific entities, the other one for the co-ordination of behaviours (actions, work) of a par-

10 J. Starościak, op. cit., p. 256.

ticular kind. The second approach seems to be less correct because the participants of such a relationship can only be legal entities, not the behaviours of these entities. Also in the case when a provision says about the co-ordination of actions, it must indicate, at least indirectly, the co-ordinator and the co-ordinated entities. The reference to behaviour (actions) introduces an additional content to the legal norm establishing co-ordination. It is because it limits the application of co-ordination competence only to the behaviours indicated in the provision.[11]

Co-ordination – according to the legislator's will – may have various scopes. According to Jerzy Starościak, it belongs entirely to the internal sphere of action of administration.[12] I would not be able to defend such a radical view. It is possible to imagine situations in which an administrative body gains a competence to influence external entities in order to ensure harmony of their actions. In this study, however, I focus on the internal sphere of administration, which is a typical field of co-ordination. With such an assumption, it should be noted that co-ordination takes place in each of its settings of the internal sphere of public administration.[13] It appears as the main element in the macro-administrative setting. An administrative body acting within the limits of its statutory competences will be the co-ordinator. In this case, we can speak of co-ordination competences. Co-ordination takes place in the micro-administrative setting. Here, it will consist in harmonising the behaviours of subordinates by the superior in an office or another public organisational unit. The legal norms that apply to such co-ordination and define the nature and limits of the means of influence applied will come mainly from two complementary sources – administrative law and labour law. An intermediate setting covers various structures, such as offices, their organisational units and organisational units in public organisational units. They will act as co-ordinators and co-ordinated entities, and the legal basis for their actions will be largely the acts included in the sources of internally applicable law – statutes, regulations, internal ordinances and even guidelines (Article 93 of the Constitution of the Republic of Poland).

When writing earlier about the co-ordination relationship, I have not yet referred to the object of co-ordination. Nonetheless, it seems quite obvious. It covers the co-ordinator's behaviour to ensure harmony in the relations between co-ordinated

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11 As it seems, the concept of co-ordination in this sense is used in Article 11(1)(5a) and (7) of the Act of 26 April 2007 on crisis management (Journal of Laws of 2017, item 209, as amended).

12 J. Starościak, op. cit., p. 61.

13 A distinction between the two dimensions (settings) in the internal sphere of public administration (macro-administrative and micro-administrative) was proposed by Irena Lipowicz, *Pojęcie sfery wewnętrznej administracji państwowej*, Katowice 1991, pp. 86 et seq. I think that this division should be enriched with an intermediate setting, which I justify in: *Kierownictwo w prawie administracyjnym*, Warszawa 2016, pp. 40 et seq.

 DOI: 10.7206/kp.2080-1084.219

entities. It also covers the behaviours of the co-ordinated entities aimed at achieving or maintaining such a harmony. However, a certain duality of these behaviours should be pointed out. Co-ordination can be positive or negative. In the first case, co-ordination behaviours will be future-oriented. Their goal will be to ensure future harmony and remove in advance any obstacles that could endanger it. Negative co-ordination means the removal of disharmony that already exists, as exemplified by resolution of competency disputes or disputes of a different nature. Therefore, it can be concluded that resolving any disputes in public administration is a manifestation of co-ordination, even if no such term is used in the regulations. Negative co-ordination would also include removing the effects of behaviours that have already disturbed the desired harmony, which may consist in restoring the previous state (*in integrum restitutio*).

At the end of the debate on the co-ordination relationship, what should be pointed out is a certain inappropriate manner that sometimes appears in colloquial speech, and sometimes even in regulations. It is a (normative) statement that confers on the entity A the competence to co-ordinate the actions of entity B, with the second and possibly further co-ordinated entities missing in such a statement.[14] Therefore, such a statement does not create a co-ordination relationship within the meaning defined above, but a legal relationship of a different nature. It will probably be about establishing a management measure in which entity A will have to ensure that there is no disharmony between individual behaviours of entity B. It seems that the above-mentioned phrase may appear in the regulations in two cases. In one of them, the lawmaker intends to establish a management situation, but tried to avoid the word "manages" or another synonymous word for some reason. This may result from a legislative error.[15] In the other one, it is important for the legislator to create a hybrid type situation under administrative law that makes it possible for entity A to influence entity B using only one means specified in the provision.

Difficulties associated with the specification of co-ordination and distinguishing it from other typical administrative law situations may have one more source that is beyond the structure of the co-ordination relationship. It is because co-ordi-

14 The very regrettably formulated provision of Article 26(2) of the Act of 4 September 1997 on government administration departments (Journal of Laws of 2017, item 888) seems to be a provision of such a nature. It stipulates that the minister competent for higher education shall co-ordinate the recognition of qualifications in regulated professions and activities. This provision does not specify the entities that are the addressees of the minister's co-ordinating measures.

15 Małgorzata Stahl rightly notes that the legislator refers to co-ordination less frequently than it was in the People's Republic of Poland (op cit., p. 359). I think that this is largely due to the fact that the concept of management was very reluctantly used in legislation in the former political system. It was replaced by an incorrectly used concept of co-ordination.

nation may occur as an independent type of administrative law situation, or it may occur in close connection with control, supervision or management. Interestingly, a similar relationship can also be observed in the case of control. And it may exist alone or may appear in conjunction with supervision or management. Functional control (integrated with management) and institutional control are distinguished on this basis. It seems that these terms can also be reasonably referred to co-ordination.

Functional co-ordination can be related to management. It can be said that it cannot be avoided when an administrative body is in charge of more than one entity. Such a body may and should use the applied management means so as to ensure harmony in the actions of subordinate entities or at least to remove contradictions that arise between them. Of course, not every means of management will serve this purpose. This can be demonstrated in a simple example from the micro-administrative level. A department's director in a ministry gives their subordinate an official order (a typical means of management). Such an order may be to independently prepare a draft document by the subordinate. It may also be an obligation to agree the contents of such a draft with another subordinate of the director. We will have to do with a co-ordinating means of management only in the second case. An official order is a universal means of management and can be used in a variety of circumstances. There are also such management means that by their nature are focused on co-ordination. An example of this is the ordering and conducting of a meeting (briefing) of the superior with direct subordinates. Similarly, for a macro-administrative and indirect setting, it is possible to indicate means of management that are not related to co-ordination, such as those that serve co-ordination and the ones that always serve co-ordination as this is their nature. Therefore, functional co-ordination falls within management, but it does not exhaust it. At this point, a fairly widespread error of legislative technique should be pointed out. It is about the fact that after conferring a management competence to an administrative body, its co-ordination competence is mentioned in the same or in the next provision, but it is forgotten that it is already included in the previous one. Such a reminder of a co-ordination competence is completely needless. It causes unnecessary confusion. For example, Article 146(3) of the Constitution of the Republic of Poland stipulates that the Council of Ministers manages the government administration. Therefore, the provision contained in Article 146(4)(3) becomes completely unnecessary, as it states that the Council of Ministers co-ordinates and controls the work of government administration bodies.

Signs of functional co-ordination can also be seen at the dimension of supervision. The use of means neutral from the point of view of co-ordination, such as those that can serve the co-ordination and those that are intended precisely for

 DOI: 10.7206/kp.2080-1084.219

that purpose, can be seen in this area as well. The former are the most numerous ones in any case. Agreement can be an example of the second type of means. It belongs to the group of supervisory measures *ad rem*. It consists in the supervising body's granting the consent to the action of the supervised entity, as well as to the specific form of such an action. A supervising body may make such a consent conditional on the projected actions' form that ensures their harmonisation with the actions of another supervised entity. In such a case, agreement will serve the co-ordination. A supervisory means that inherently belongs to co-ordination can be agreement with the involvement of many entities. If many entities are obliged to agree their intentions with one supervisory body, naturally it will seek to remove the existing contradictions.

Supervision differs from the management among other things in the fact that the active (supervising) body usually does not have the freedom to choose the means of action. This way, it is usually the legislator alone who decides on the co-ordination-oriented use of a means of action in case of co-ordination related to the supervision. It also seems that there are far less cases of co-ordination measures under supervision than co-ordination actions under management.

In the case of **control**, it is difficult to speak of impact measures. Control differs from management and supervision precisely because it is non-executive. Its goal is not to create a new legal situation of a controlled entity. The exercise of control does not consist in the use of acts of will, but acts of knowledge. Admittedly, various administrative law relations[16] are established in the process of control, but the final result of control falls within the sphere of existence, not in the sphere of duty. Can co-ordination then be connected with control? It seems so. After all, co-ordination does not have to rely on the use of executive means of influence. If an irregularity in the actions of entity P was found in audit results (report, post-audit statement) involving the lack of proper co-operation with entity Q, then we will undoubtedly have to do with an "act of co-ordination".

It is time to move on to **institutional co-ordination**, which can also be referred to as "pure" or "independent" co-ordination. It appears first of all where an administrative body has been charged with the obligation (task) of co-ordination, but it has not been granted the status of a managing, supervising or controlling body. This is a case similar to the more popular problem of mismatch of competences and the tasks of an administrative body. The tasks have been designated legally, but there are no relevant competences. Competences must not be presumed or derived from regulations specifying the tasks. In such a situation, the administering

[16] Cf. I. Niżnik-Dobosz, *Stosunki kontroli w administracji publicznej demokratycznego państwa prawnego*, Warszawa 2015, pp. 133.

body is only left with an opportunity to use non-executive instruments that do not require legally defined competences.[17]

Therefore, pure co-ordination may be carried out by **providing information**, and perhaps also by preventing to certain information. Having certain information will, after all, encourage the administered entity to specific behaviours. Lack of information might prevent certain behaviours. For example, the co-ordinator could fulfil its task by informing entity X about the actions or intentions of entity Y. With such information, entity X will avoid taking actions that impede the functioning of entity Y.

A somewhat further-reaching means of pure co-ordination will be **providing advice**. This action is not only about providing knowledge, but also about indicating the suggested actions. In the case in question, it may be suggesting actions that will ensure harmony in the relations between co-ordinated entities. These indications must not be legally binding because they do not have any basis in the competences of the co-ordinating body. Therefore, in order for the co-ordinating body to be effective, it must persuade the other entities to act in accordance with the provided advice. Therefore, the advice should be with a justification. The more convincing arguments will be used therein, the greater the chance of a behaviour of the co-ordinated entities in accordance with the provided advice.

Similar features will be demonstrated by **non-binding recommendations**. By means of recommendations, a co-ordinator expresses their will. They demand specific behaviours of the recipients of the recommendation. However, they must not impose their will and enforce a behaviour that is in accordance with such a will using legal instruments as they have no such competences in the case in question. Therefore, they should support their demands with a sufficiently convincing justification.

Co-ordination consultation seems to be a quite effective form of co-ordination. In this case, it is a consultation organised by the co-ordinating body to which it invites co-ordinated entities, preferably all. However, the invitation is not binding in this case as there is no legal basis in this regard. Therefore, participation in the consultation is voluntary. However, such a consultation may bring further-reaching benefits than all the previously mentioned means of pure co-ordination. It is because in the course of consultation there is an exchange of ideas taking place not only between the co-ordinator and each co-ordinated entity separately. Views are exchanged also between the co-ordinated entities. It should ensure the synergy effect. It is because more knowledge is generated during consultation than the total knowledge contributed by all participants. There is also a conviction on the part of co-ordinated

[17] Cf. W. Góralczyk jr, *Podstawy prawa i administracji*, Warszawa 2014, pp. 211 et seq.

 DOI: 10.7206/kp.2080-1084.219

entities of their own participation in the elaboration of the final position, which further strengthens the willingness to respect it.

A question should now be asked whether there may be some specific means of co-ordination in the form of legally defined competences of the co-ordinating body. However, these means would be more far-reaching than those mentioned so far because they would assume the possibility of shaping the behaviour of co-ordinated entities. This is about such means that are neither typical management means nor typical supervision means. They do not appear very often in the positive law. It would be opportune to demand that their catalogue be extended. For example, they include convening and conducting co-ordination consultations the participation in which is mandatory for the co-ordinated entities. Another means of co-ordination would be a binding demand for reports on co-operation with other co-ordinated entities. A plan constituting a binding legal act may also be a means of co-ordination.[18] Currently, this means seems to play an important role, in particular in the indirect and micro-administrative setting of the internal sphere of public administration. In the latter one, a carrier of a plan may be an official order issued to all subordinates.

To sum up the discussion on co-ordination, it is worth mentioning the co-ordinating bodies that not only co-ordinate, but are themselves a manifestation of co-ordination. What is meant here are collective bodies with such a composition that co-ordinated entities participate in them. It is, for example, the Council of Ministers, which carries out co-ordinating actions in relation to the ministers who are members thereof.[19]

Co-operation in public administration differs from co-ordination in that there is no separate entity appointed to provide harmony. Participants in the co-operation act as equivalent entities that strive to harmonise their behaviours.[20]

Co-operation in public administration can be perceived as a factual state or as a legal relationship. When looking for a “common denominator” for various typical relationships in public administration, co-operation can also be treated as an administrative law situation. In such a case, it will cover various legal relationships as well as actions and factual states.

Various entities co-operate in the exercise of public administration. Several types of co-operation can be distinguished against this background. In the macro--administrative setting, the following can be indicated: 1) co-operation of public

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18 It is pointed out both by J. Starościak (op. cit., p. 63), as well as M.A. Waligórski (op. cit., p. 490).

19 M.A. Waligórski, op. cit., p. 482.

20 Cf. Z. Leoński: *Nauka administracji*, Warszawa 2001, p. 129.

administration bodies, 2) co-operation of entities involved in public administration that are not bodies (e.g. co-operation of public companies, state-owned enterprises), 3) co-operation of administrative bodies and entities participating in the exercise of administration on the one hand with the administrated bodies on the other, 4) co-operation between entities administered in connection with the performance of duties or the use of administrative law powers. The third and fourth case are not included in further considerations. It is because the third one belongs to the sphere of administrative proceedings, and it has already been extensively elaborated within this sphere.[21] The fourth case is not included in the internal sphere of public administration at all. It awaits a separate study.

As a starting point for the discussion on co-operation in public administration, I suggest to adopt its axiological basis. The issues of the axiology of administrative law and public administration have recently become the subject of a growing interest of legal writers.[22] When I participated in the discussions on this subject, I suggested distinguishing three groups of values relevant from the point of view of administrative law: 1) basic values preceding law, 2) values inherent in law, and 3) instrument values that serve to achieve or maintain other values.[23] The values from the second group may be of particular importance for considerations on co-operation. They take the form mainly of general principles of the administrative law. I suggest specifying a principle of common co-operation among them. According to this principle, all public administration bodies, and even more broadly – all entities involved in the public administration – must co-operate in harmony. The general principles of administrative law may be of a different nature – it may be descriptive or directive, and within the latter, it may be the demands of legal writers or legal norms.[24] The principle of common co-operation seems to have the value of a legal norm, which, however, has not been formulated in a single explicit legal (constitutional or statutory) provision yet. Therefore, what we have here is a case of a legal norm derived from other applicable legal norms.

The elements of the principle of co-operation should be sought in the highest-ranking norms, starting with those that result from the Constitution. For example, it is appropriate to indicate the following ones. According to Article 1 of the Consti-

[21] A significant development of this field could have been seen recently, an example of which is the addition of Articles 96a–96n on mediation to the Code of Administrative Procedure.

[22] J. Zimmermann (ed.), *Aksjologia prawa administracyjnego*, Vol. 1 and 2, Warszawa 2017, passim.

[23] W. Góralczyk jr, *Aksjologia środków kierownictwa w administracji publicznej*, [in:] J. Zimmermann (ed.), op. cit., pp. 749 et seq.

[24] For various ways of understanding the rules of law and the different nature of particular rules, cf. Z. Ziembiński: *Teoria prawa*, Warszawa–Poznań 1978, pp. 102. See also: J. Jabłońska-Bonca: *Podstawy prawa dla ekonomistów i nie tylko*, Warszawa 2007, pp. 347.

 DOI: 10.7206/kp.2080-1084.219

tution, the Republic of Poland is a common weal of all citizens. It is about – as it seems – an indivisible weal that is in the same relation to every citizen. Therefore, the bodies of the Republic of Poland, including public administration bodies, exist to achieve or secure this weal. They should not act in a mutually opposing way in this regard. The Nation is the source of all public authority in the Republic of Poland (Article 4 of the Constitution). Therefore, this power comes from one source. Bodies obtaining their legal status from this source should keep this in mind. Since this is a common source for all bodies, any disharmony between them should be assessed negatively. It should be avoided, and if it happens anyway, efforts should be made to alleviate it. Without getting into details to dispute the normative nature of the preamble to the Constitution, it is worth quoting a passage thereof, according to which the Constitution was established as "fundamental rights for the State based on (...) co-operation of the authorities". At the same time, it seems that the quoted text is not only about the co-operation of the executive, the legislative and the judiciary, which was described in Article 10 of the Constitution, but also about co-operation within each of these branches of power. *De lege ferenda*, I would suggest to clearly formulate the principle of co-operation between all organs (bodies) of the Republic of Poland in the future Constitution of the Republic of Poland.[25]

The principle of common co-operation has also a source in the jurisprudence. It can be derived from the very definition of a public administration body or the definition of the public administration in question. And so, the name organ comes from the Greek noun όργανων, which means an instrument, a tool. This indicates the ancillary nature of a body (organ). It does not have its own interests, but should serve for the weal of the entity whose tool it represents. In the Republic of Poland, such an entity will be the State, as well as a territorial self-government unit. Since all public authorities are to serve the weal of the same entity, they must not fail to co-operate with each other.

The scope of the principle of co-operation seems to be very broad, both from the subjective and objective point of view. It binds all public authorities, and therefore also all bodies exercising public administration. It is also valid in the internal sphere of public administration and in all its settings. All territorial self-government units and organisational units of such units and offices should follow this principle. This principle should be followed by all public officials and employees of public administration. Interestingly, this principle seems to exceed the usual organisational (system-based) ties present in public administration. It does not apply to the ties that occur under management or supervision, but it appears where they do not exist. Management and supervision relate to vertical ties. Co-operation is a horizontal

25 See: W. Brzozowski: *O potrzebie reformy konstytucyjnej*, "Państwo i Prawo", 2017, 12, p. 12.

relationship. It refers precisely to the entities that are not in relationships containing an element of power and subordination.

The common nature of the principle of co-operation covers not only the entities participating in the public administration. The principle is also common in the material field of application. None of the types of administrative actions has been excluded from the scope of this principle.

Forms of co-operation in public administration are very diverse and their catalogue is open. An attempt should be made to develop their typology. At the same time, it must be agreed that it must not be completely disjunctive or exhaustive. Legislation and exercise of public administration will certainly bring new, currently unknown forms.

At the beginning, two basic groups of forms of co-operation must be distinguished. The first one covers informal actions, i.e. the ones for which the law does not provide for a specific form and which should be taken even in the absence of explicit competence-based authorisation. The second includes the formalised forms of co-operation.

Considering the **non-formalised** actions in the first place, they can be divided further. They will also include such actions that an administrative body takes independently and unilaterally, although in relation to (for) a specific entity. They are complete and effective without the need for any action to be taken by the entity towards which they were oriented. They can be described as unilateral. The opposite will be the actions that are carried out jointly by two or more entities and become effective only if these actions are consistent. Let us call them bilateral (multilateral) ones.

It is time to present examples of **unilateral**, non-formalised manifestations of co-operation. **Refraining from disturbing** can be considered the most passive one. Despite appearances, it is of fundamental importance. An administrative body should carry out its tasks and competences in a way that does not hinder the activity of other entities of administrative law. The discussed form of co-operation assumes the value of the legal obligation incumbent upon the body that implements administration. The source of this obligation is directly the principle of common co-operation as one of the general principles of administrative law. This obligation is therefore widespread. It is incumbent on all entities involved in the exercise of public administration. It should be kept in mind, however, that this obligation in relation to the tasks and competences of the body takes the position *legis generali*. It is more general than any task or competence of the body. On the other hand, competence in a particular case may include the power to interfere deeply with the actions of

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another entity. It may be perceived by the entity as "disturbing". Nonetheless, it is legally justified.

Another non-formalised manifestation of co-operation may be the **provision of useful information**. The great importance of information in contemporary administration processes was mentioned when discussing co-ordination. Body M that obtained information that might be useful to body N according to it should send it to it. It should do it immediately. The case in question has also a negative aspect. The concealment of information may be considered a breach of law. It is because it violates the principle of common co-operation. The norm presented here as *lex generalis* gives way to the norms arising from the regulations on the protection of classified information and from procedural and political system provisions imposing a certain order in the circulation of information in public administration.

Non-formalised types of co-operation also include **warning**. It is a qualified form of providing useful information. It takes place when an administrative body noticed a threat appearing on the side of another entity. In such a situation, it should immediately give an appropriate warning.

Advice is also a special form of provision of useful information. In such a case, the mere forwarding of messages is enriched by at least two components. In addition to knowledge, it also provides: 1) suggestions on how to behave and 2) arguments supporting these suggestions. The better arguments support the suggestions, the stronger (more effective) the suggestions are. Advice may also consist in suggesting various possible variants of behaviour. Of course, the decision on whether to use advice or not is taken freely by the entity to whom the advice is sent and only such an entity is responsible for not using the provided advice.

At the end of the overview of non-formalised, unilateral manifestations of co-operation, we should mention the **provision of technical assistance** (material and technical assistance). It may include, for example, providing a room in an office for an official of another public administration body delegated to perform tasks outside their office.

Several **bilateral (multilateral) manifestations** of non-formalised co-operation can also be named. First of all, providing useful information can take the form of multilateral exchange. If this practice is consolidated, it may become more institutionalised. In such a case, we can speak of the establishment of an administration network. This phenomenon has a fairly long tradition. Its manifestations could certainly be noticed already in the times of the Polish People's Republic.[26] It is currently

26 Z. Rybicki: *Administracja gospodarcza w PRL*, Warszawa 1975, pp. 349.

developing widely, sometimes going beyond the borders of the Republic of Poland. For example, there are European networks operating within the European Union.[27]

Common consultations can be given as an example of another aspect of multilateral co-operation. During a consultation, there is also an exchange of information. However, this exchange takes place differently than outside consultation. The information is exchanged on a regular basis and can be enriched immediately as a result of the subsequent statements of the participants of the consultation. Therefore, the discussion held during a consultation is likely to lead to a synergy effect enhancing this form of co-operation. It is because new concepts and ideas may emerge in the course of the debate that go beyond the total knowledge of the entities participating in the debate.

Multilateral non-formalised manifestations of co-operation also include informal agreement on actions. This is the case of agreements that are not legally binding and do not have the form of a legal act. Compliance with what has been agreed will therefore not be protected by a legal sanction. It will remain only in the sphere of administrative culture.

Formalised forms of co-operation in public administration are distinguished by the fact that they require a particular form for their effectiveness. By their very essence, they are focused on long-term co-operation rather than an isolated manifestation of co-operation. Most importantly, they consist in establishing appropriate legal relations between the co-operating entities, which did not take place in the case of non-formalised actions. Formalised forms of co-operation can be divided into two types. Some of them are only consensual legal acts. They arise through matching declarations of will made by legal entities with a view to establishing binding obligations. And this is where their nature is exhausted. The latter ones are expressed in the fact that a series of consensual (and other as well) legal acts establishes a permanent structure that is a new legal body, distinct from the co-operating entities. The point is to establish a new organisational unit (sometimes also a legal body) that is to serve the implementation of tasks incumbent on its founders or participants.

Recently, consensual acts in public administration have attracted special attention of legal writers.[28] The legislator is also active in this field time and implements

27 A. Piotrowska: *Europejska współpraca informacyjna w sieci organów*, [in:] J. Sługocki (ed.) *Dziesięć lat polskich doświadczeń w Unii Europejskiej. Problemy prawnoadministracyjne*, Vol. 1, Wrocław 2014, passim, in particular pp. 737; J. Wegner-Kowalska: *Skuteczność unijnego prawa administracyjnego na przykładzie ochrony weterynaryjnej*, Warszawa 2017, p. 111.

28 A. Błaś, J. Boć: *Formy prawne w sferze działań zewnętrznych administracji publicznej*, [in:] *System prawa administracyjnego*, Vol. 5, Warszawa 2013, pp. 234 et seq.

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new types thereof all time, often without reflections on their legal nature and legal effects of the adopted solutions. Therefore, the typology of such acts is still an open question. One thing seems not to raise any doubts, namely that among these acts there may be the ones that belong entirely to administrative law[29] and the ones that are civil law contracts. For the conclusion of the former type of acts, it is necessary to have legal capacity under administrative law, and for the conclusion of the latter type, to have legal capacity under civil law. Both groups of entities capable of concluding the consensual acts in question do not coincide. In the field of administrative law, these acts may bind administrative bodies representing the same person under civil law (e.g. the State Treasury). They can also be concluded between various organisational units and their organisational units whom the civil law does not "see" at all.

In order for two entities to be able to become bound by a civil law act (contract), the legal capacity of each party is necessary. This capacity is common in the sense that each entity equipped with this capacity may enter into a contract with any other entity with such a capacity. It is different in administrative law.[30] In order for the administering body to be bound by a consensual act, it must have an appropriate competence (internal competence in the case of internal units and organisational units). This competence entitles it to conclude a bilateral act with a specific entity or with an entity of a specific type, not with an entity of any type. In the case of a consensual act concluded by two administering bodies, each of them must have the competence to conclude this very act with precisely such a body. Therefore, a situation must arise in which the competences of two bodies under administrative law "fit" together.[31]

Certain peculiarity is also demonstrated by the conclusion of civil law contracts by public administration bodies.[32] Legal capacity itself is not enough for an "ordinary" civil law entity to be bound by a civil law contract. On the other hand, a public administration body, in order to incur civil law obligations on behalf of the represented legal person, must additionally have appropriate competence resulting from the norms of administrative law.

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29 This is how Ewa Olejniczak-Szałowska has defined an administrative agreement in: *Porozumienie w sprawie przekazywania zadań publicznych (uwagi dyskusyjne na tle modelu ustawodawczego)*, [in:] J. Boć, A. Chajbowicz (eds.), op. cit., p. 380–381.

30 J. Filipek: *Stosunek*..., p. 99.

31 The metaphor of two rail vehicles can be used here, which can only be coupled if they are equipped with compatible couplers.

32 Of course, a party to the contract will not be a public administration body, but the legal person on whose behalf such a body acts.

Let us now move on to the cases of co-operation that consist in the establishment of a new legal entity. Here too, institutions of administrative law or civil law can be used. Examples of the first type are provided by the law of the territorial self-government. And such a permanent structure serving the co-operation of gminas (municipalities) will be a union of gminas.[33] I would also recognise associations of territorial self-government units as such a structure, although the legislator does not list them directly among the institutions serving co-operation.[34] It should also be noted here that both unions and associations of territorial self-government units not only exist in the dimension of administrative law, but they also have a civil law personality.

The structures that serve the purpose of co-operation in public administration, using only private law, can be commercial companies, in particular share-holding companies – a public limited company and a private liability company. Only entities that have a legal capacity civil law personality can be the participants (shareholders, partners) of such companies. This limits the group of potential participants in this form of co-operation on the side of bodies governed by administrative law. Not every person with legal capacity under administrative law is also a person with legal capacity under civil law. Certainly, entities that belong to the indirect and micro-administrative setting of the internal sphere of public administration do not possess this feature. Nonetheless, an advantage of the form in question is an opportunity to use it for lasting co-operation not only of Polish law entities. It can also be used to develop cross-border co-operation.

While moving on to sum up considerations on the forms of co-operation in public administration, one more distinction should be pointed out. Namely, there may be such manifestations of co-operation in which only two entities take part. More or less permanent co-operation takes place only in a certain area. There may also be manifestations of co-operation that are designed for numerous participating entities (network type co-operation).

In the considerations on co-ordination, one could attempt to find a specific administrative law relationship – a co-ordination relationship. In the case of co-operation, it is impossible to find a single administrative law relationship appropriate for this legal situation. This is caused first of all by the fact that co-operation, somehow, "spills out" beyond the area of administrative law. It uses quite abundantly civil law relations, even the ones with a diverse nature.

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[33] Cf. Articles 64–73b of the Act of 8 March 1990 on gmina self-government (Journal of Laws of 2017, item 1875).

[34] Cf. Articles 84 of the Act on gmina self-government.

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In a situation of co-operation, it is difficult to find a classical administrative law relationship that covers an administrative body and the administered entity where they are in unequal dependence. Unless it is assumed that such relations take place between the co-operating entities and their joint superior body. the latter may be in the situation of both management and supervision towards the co-operating entities. However, this does not explain yet what links the co-operating entities. Is there only a factual relationship between them, or is there a legal relationship? The weakness of such a thought structure is also the fact that there can be no common superior body at all. This can be most clearly seen in the sphere of cross-border co-operation. Therefore, the question remains open whether the phenomenon of co-operation produces any specific legal relations within the administrative law, assuming the equivalence of entities, which is rather typical of private law (*sui generis* legal relations).[35] If the answer was positive, it would probably be necessary to identify a few types thereof.

Co-ordination and co-operation in public administration are legal situations with many forms. They seem more diverse than the ones in management, supervision or control. I think that it is worth continuing scientific exploration of these phenomena, in particular in the field of administrative law. I consider this research paper only a voice in the discussion on this subject. Many issues related to co-ordination and co-operation in administration still require scientific explanation. A further stage should involve regulating these activities within the framework of the positive law. This could be implemented by future act – the "General Provisions of Administrative Law".

[35] Jerzy Starościak criticised the existence of legal relationships of equivalent legal entities in general administrative law (op. cit., pp. 221 et seq.). However, he allowed the possibility of establishing such relations in the internal sphere of public administration (ibidem, pp. 235–236).