

LEGAL BASIS FOR THE COOPERATION OF POLICE SERVICES WITH INFORMERS – OUTLINE OF THE ISSUES

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ABSTRACT

The subject of this analysis is the legal basis for cooperation between police services and informers.¹ This form of operational and reconnaissance activities plays a key role in the system of activities aimed at combating crime. The issues raised herein have an important theoretical and practical significance because all police services cooperate with informers, and the collected information often cause seemingly imperceptible but far-reaching legal effects. In the Polish legal system, this cooperation has been unregulated for many years, which results in a constant decrease in its effectiveness and is a serious threat to the legal security of officers who conduct this kind of

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¹ For the purposes of these considerations, this term was considered to be synonymous with all categories of people who covertly and consciously provide assistance to police services. It may include providing them with information, regardless how it was obtained, about persons, environments and places that remain in the legitimate interest of these services, as well as performing the tasks commissioned by their officers.

activities. Thus it is necessary to regulate many important problems related to this cooperation in the competence acts of the police services.

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INTRODUCTION

Ensuring the safety of citizens is one of the most basic goals of the state's activity. This was explicitly expressed in art. 5 of the Constitution of the Republic of Poland.² This should be understood as countering all unlawful threats and attacks that are aimed at the functioning of citizens. The reaction of state services may also be preventive in the face of actual or potential, although real, threats and attacks.³ Tasks in this area are implemented primarily by police services and focus mainly on detecting crimes and prosecuting their perpetrators. The Police play a leading role among these services, but it is also justified to include the Border Guard, Military Police and Central Anticorruption Bureau in this group. In the case of the latter, it is correct to assume that the scope of its activities, contrary to statutory provisions, does not meet the criteria adopted for special services that deal with intelligence or counterintelligence.⁴

² Journal of Laws 1997, no. 78, item 483.

³ P. Sarnecki, *Komentarz do art. 5*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom I*, L. Garlicki, M. Zubik (eds), 2016, <https://sip.lex.pl/#/commentary/587734533/531973?keyword=konstytucja%20rp%20komentarz&toHit=1&cm=STOP> (accessed: 6.08.2019).

⁴ See S. Hoc, P. Szustakiewicz, *Ustawa o Centralnym Biurze Antykorupcyjnym. Komentarz*, LEX/el.2012, comment on art. 1; <https://sip.lex.pl/#/commentary/587334427/131867?keyword=zakupu%20kontrolowanego&toHit=1&cm=STOP> (accessed: 8.08.2019); also: S. Zalewski, *Służby specjalne w państwie demokratycznym*, Warszawa 2005, p. 34.

THE IMPORTANCE OF POLICE COOPERATION WITH INFORMANTS

It is rightly pointed out that detecting activities are based primarily on various forms of operational work. The secrecy of these activities and the admissibility of using deceit while performing them also contribute to this. It makes them a tool much more effective in detecting crimes and their perpetrators than the measures specified in the Code of Criminal Procedure, which mainly serve to gather evidence.⁵ Despite this, operational and reconnaissance activities have still not been defined in the Polish legal system. Such attempts have been made in the literature many times.⁶ There is no doubt, however, that these are secret activities of state services with a statutory basis, which perform reconnaissance, detection, preventive and evidentiary functions.⁷

Undoubtedly, cooperation with informers plays a key role among numerous forms of operational work.⁸ However, it is often marginalized. This is manifested, among others in the fact that such cooperation is perceived as one of the historical stages of the development of operational activities, where the majority of operational knowledge was acquired through personal human activities.⁹ In fact, cooperation with these personal sources allows police services to undertake a wide spectrum of offensive operations that involve active collecting of information. On the other hand, there are the possibilities of technical measures which are passive and are used to verify and supplement information obtained from informers, as well as to monitor, to a limited extent, the activities of criminal groups. Often, knowledge from personal sources, although modest in quantitative terms compared to

⁵ E. Gruza, M. Goc, J. Moszczyński, *Kryminalistyka czyli rzecz o metodach śledczych*, Warszawa 2008, p. 62.

⁶ See T. Hanausek., *Kryminalistyka. Zarys wykładu*, Warszawa 2009, p. 112; J. Konieczny., *Czynności operacyjno-rozpoznawcze*, [in:] *Kryminalistyka*, J. Widacki (ed.), Warszawa 2008, pp. 124–131; M. Kulicki, *Kryminalistyka. Wybrane problemy teorii i praktyki śledczo sądowej*, Toruń 1994, pp. 68–69; S. Pikulski., *Działania operacyjne Policji*, “Wojskowy Przegląd Prawniczy”, 1996, no. 2, pp. 52–65; J. Widacki., *Kryminalistyka*, Katowice 1984, p. 127.

⁷ A. Taracha, *Czynności operacyjno-rozpoznawcze. Aspekty kryminalistyczne i prawnodowodowe*, Lublin 2006, p. 25.

⁸ See. M. Chrabkowski, *Metody pracy operacyjnej*, [in:] *Przestępczość zorganizowana. Fenomen. Współczesne zagrożenie. Zwalczanie. Ujęcie praktyczne*, W. Jasiński, W. Mądrzejowski, K. Wiciak (eds), Szczytno 2013, pp. 487–527.

⁹ D. Szumiło-Kulczycka, *Czynności operacyjno-rozpoznawcze i ich relacje do procesu karnego*, Warszawa 2012, p. 338.

data obtained through technical means, is very important for operational activities. Therefore, it is impossible to dispute the assertion of the key role of informers. Views on the possibility of their replacement by technical means, sometimes also referred to as “telecommunications investigation”,¹⁰ do not find any confirmation in the practice of the operational activities performed by the police services. The greatest potential in the field of proactive activities that rationalize the efforts of these services and increase their effectiveness, and which therefore should develop faster,¹¹ should be seen in an effective cooperation with informers. In the literature, this form of operational work has been rightly pointed out for many years as accompanying all activities undertaken in this area. It is aptly acknowledged as an activity that plays a constitutive role in determining the nature of classified activities undertaken by state services in the sphere of public security.¹² However, other forms of operational work have been much more popular for years. Yet, they often involve operational control, controlled handing over or acceptance of property benefits, or an implicitly supervised shipment.¹³ This is due to the fact that they are considered to be more interfering with human rights, and thus constitutional rights and freedoms. Therefore, it is even more justified to broaden the analysis of the legal basis for cooperation with informers, against which such allegations are not raised, and which largely determines the effectiveness of detection activities.

HISTORICAL CONTEXT

The assessment of the legal basis for cooperation with informers is not possible without an extended presentation of the numerous changes that have taken place in this area since Poland regained independence and of their impact on the current shape of this legal instrument.

¹⁰ A. Staszak, *Porwania w celu wymuszenia okupu. Studium kryminalistyczne*, Opole 2010, p. 276.

¹¹ J. Konieczny, *Kryzys czy zmiana paradygmatu kryminalistyki?*, “Państwo i Prawo”, 2012, no. 1, pp. 3–16.

¹² S. Zalewski, *Czynności operacyjno-rozpoznawcze jako forma realizacji zadań służb specjalnych w systemie bezpieczeństwa państwa*, “Przegląd Policyjny”, 2002, no. 3–4, pp. 125–138.

¹³ A. Taracha, *Uzyskiwanie i wykorzystywanie dla celów bezpieczeństwa informacji o osobie a prawa jednostki (zagadnienia wybrane)*, “Teki Komisji Prawniczej O.L. PAN”, 2018, vol. XI, no. 2, pp. 443–458.

INTERWAR PERIOD

In the *Act of 24 July 1919 on the State Police*,¹⁴ there were provisions concerning primarily the most fundamental issues that had to be regulated at the time of the creation of the Polish state. Therefore, it would be difficult to find them describing in detail the powers of the State Police to cooperate with informers. In art. 1 of the Act, it was specified that the Police is a state organization of the security service, and art. 2 indicated that it is an executive body of state and local government authorities and has the task of protecting security, peace and public order. In art. 7 the appointment of one of the specialized divisions of the Police, i.e. the investigation service, was signaled.¹⁵ Therefore, it can be assumed that the legal basis for the secret collection of information, and, in particular, cooperation with informers, was quite modest. This was also largely due to the fact that neither the doctrine nor the jurisprudence saw the need for precise regulation of operational activities.¹⁶ It was decided that the details related to these activities would be specified in the temporary surveillance instruction,¹⁷ in which informers were treated only as one of the types of observation. It is worth emphasizing, however, that it has not been pointed out that the lack of confidentiality of the instruction may contribute in any way to reducing the effectiveness of the operational activities of police services.

Initially, the provisions contained in the codes of criminal procedure which were in force in the former partitions were adopted as a very general legal basis for the use of informers by the Police. In the case of the former Austrian partition, it was paragraph 87 of the Criminal Procedure Act of 23 May 1873. In the former Russian partition, the legal basis could be paragraph 254 and, 312 sentence 2 of the Judicial Criminal Proceedings of 20 November 1864. A similar solution was adopted in the former German partition in paragraph 53 of the German General Act on criminal proceedings of 1 February 1877. In all these regulations, the direct use of

¹⁴ Journal of Laws of the Republic of Poland, 1919 r., no 61, item 363.

¹⁵ A. Misiuk, *Historia bezpieczeństwa wewnętrznego w Polsce: zarys dziejów instytucji i służb w latach 1765–1990*, Warszawa 2015, p. 135.

¹⁶ L. Schaff, *Zakres i formy postępowania przygotowawczego*, Warszawa 1961, p. 178.

¹⁷ *Temporary surveillance instruction AAN*, zespół KGPP II [Team II of State Police Main Headquarters], ref. no. 89.

information obtained by informers at a trial was excluded. However, it was permissible to use their assistance to verify the notification of a crime.¹⁸

We have been dealing with a fundamental change in the legal basis for conducting operational activities by the Police since 1928. This was a consequence of the unification of Polish criminal procedural law in the form of the *Regulation of the President of the Republic of Poland of 19 March 1928 – Code of Criminal Procedure*.¹⁹ Therefore, the general legal basis for cooperation with informers should be sought in this regulation. Its creators did not completely break with the manner in which this issue was addressed in the criminal procedures of the partitioning states. However, there are numerous changes that it brought about, which mainly concerned the preparatory proceedings. It took two forms, i.e. inquiries and investigations, only the latter of which was aimed at collecting evidence needed in court proceedings. The investigation was considered to be an area that was not part of the criminal proceedings and its purpose, pursuant to art. 243 § 1 of the Code of Criminal Procedure of 1928, was to clarify whether a crime was actually committed, who can be suspected, and whether there are sufficient grounds to initiate legal proceedings. The basis for the initiation of the inquiry could be any information about committing a crime, and thus also that obtained from informers. After receiving it, the Police had to take all actions to secure the traces and evidence related to such an event.²⁰ As follows from art. 243 § 2 of the Code of Criminal Procedure of 1928, the inquiry could consist of questioning suspects and persons having knowledge of the crime or its perpetrator, collecting necessary information about the suspect, conducting interviews and other activities. Inquiry activities included, therefore, confidential intelligence (cooperation with informers), observation, surveillance, eavesdropping, provocation, analysis and censorship of correspondence.²¹ The results of inquiries that were not of legal force were recorded on the basis of art. 243 § 3 of the Code of Criminal Procedure only in the form of notes. Due to the fact that they were mainly secret activities aimed at detecting perpetrators of crimes,

¹⁸ See R. Netczuk, *Tajny współpracownik policji na tle prawnoporównawczym*, Katowice 2006, pp. 47–48.

¹⁹ Journal of Laws 1928, no. 33, item 313.

²⁰ L. Peiper, *Komentarz do Kodeksu Postępowania Karnego*, Kraków 1932, p. 286.

²¹ A. Pepłoński, *Policja Państwowa w systemie organów bezpieczeństwa II Rzeczypospolitej*, Szczytno 1991, p. 91.

they were considered operational and reconnaissance activities.²² It can be reasonably assumed that the legal basis for cooperation between police services and informers was art. 241 § 1 and art. 243 § 2 of the Code of Criminal Procedure from 1928. This is emphasized above all in the latter provision. However, detailed issues regarding cooperation with informers were contained in public internal regulations.

THE PERIOD OF THE POLISH PEOPLE'S REPUBLIC (PRL)

During the Polish People's Republic period, the first legal act in which one could search for possible legal grounds for cooperation between police/militia services and informers was the *Decree of the Polish Committee of National Liberation of 7 October 1944 on Citizens' Militia*.²³ However, it was very laconic in its content, as it consisted of several articles and determined the scope of the operation of this formation in a very general way. The determination of the detailed forms of conducting activities aimed at the implementation of statutory tasks was left, in accordance with art. 6, to the exclusive competence of the Head of the Ministry of Public Security. It also concerned the regulations of the sphere of operational activities undertaken by the officers of the Citizens' Militia (MO).²⁴ All instructions regulating operational work, issued on the basis of the above statutory authorization, were henceforth classified. Therefore, the practice formed during the times of interwar was completely broken, when internal regulations concerning this area were public. This was due to the fact that operational activities were to serve mainly the surveillance of society by the communist authorities. This required the secrecy of all forms of operational work, including primarily cooperation with informers. The operating system was modeled on Soviet solutions. Many spheres of activity of state organs, especially those aimed at the surveillance of citizens, were carefully hidden from the public, under the guise of the necessity to keep them secret. One of the reasons for keeping the operational instructions secret was supposed to be

²² *Temporary surveillance instruction AAN*, zespół KGPP II [Team II of State Police Main Headquarters], ref. no. 89.

²³ Journal of Laws 1944, no. 7, item 33.

²⁴ *Instruction of the Head of the Ministry of Public Safety of the Polish Committee of National Liberation of 30 November 1944 regarding the procedure to be followed by investigations by security authorities*, KG MO [Citizens' Militia Main Headquarters] 35/1607; *Instruction (interim) of the Minister of Public Security of 13 February 1945 on acquisition, work and agent-information records*.

praxeology of fighting crime, which justified hiding from the opponent and thus criminals of the methods used to fight them.²⁵ Attempts were also made to create the impression of a break with operational forms used in the interwar period by the State Police. In essence, however, the erroneous tradition of keeping secret department regulations concerning operational work focused on combating crime was initiated in this way.

It was quite widely accepted for many years that the legal basis for operational activities of the Citizens' Militia was art. 6 points 1–6 of the *Decree of 21 December 1955 on the organization and scope of the activities of the Citizens' Militia*.²⁶ Additionally it was also pointed²⁷ to the *Act of 13 November 1956 on the change of the organization of supreme public administration bodies*²⁸ and the *Decree of 7 December 1954 on supreme organs of state administration in the field of internal affairs and security of the state*.²⁹ However, these legal acts constituted very weak grounds for conducting operational work. These issues were also rarely considered in the literature. For many years, this was explained by the fact that operational work is only a police craft, requiring only the sum of certain practical skills, not the scientific foundation.³⁰ The intra-departmental publications describing this area of law enforcement activities were intended primarily to instruct operational officers and to enhance their qualifications, and not to analyze doubts related to the legal basis of operational activities.

The fundamental changes in the legal basis for cooperation with informers were only introduced by the *Act of 14 July 1983 on the office of the*

²⁵ See J. Rudniański, *Elementy prakseologicznej teorii walki. Z zagadnień kooperacji negatywnej*, Warszawa 1983, pp. 27–31.

²⁶ T. Hanausek, *Działania operacyjne w zwalczaniu przestępczości*, "Zeszyty Naukowe Wyższej Szkoły Oficerskiej Milicji Obywatelskiej", 1976, no. 13, pp. 252–271; Z. Szatkowski, *Czynności operacyjne w sprawach karnych*, "Problemy Praworządności", 1976, no. 11–12, pp. 52–68.

²⁷ A. Dermont, B. Rowiński, *Czynności operacyjno-rozpoznawcze w świetle ustawy z dnia 14 lipca 1983 roku*, "Problemy Kryminalistyki", 1985, no. 169, pp. 386–392.

²⁸ Journal of Laws, 1956, no. 54, item 241.

²⁹ Journal of Laws 1954, no. 54, item 269.

³⁰ T. Hanausek, *Powstanie i rozwój kierunku wykrywczego w działaniach kryminalistycznych*, "Problemy Kryminalistyki", 1978, no. 133–134, pp. 343–356; T. Hanausek, *Kryminalistyka w służbie ochrony porządku i bezpieczeństwa publicznego*, "Służba MO" [special edition], 1973, pp. 23–35; T. Hanausek, *Kryminalistyka jako naukowa podstawa działalności organów Milicji Obywatelskiej i Służb Bezpieczeństwa*, "Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace Prawnicze", 1975, no. 71, pp. 53–62.

*Minister of the Interior and the scope of activities of bodies subordinate to him.*³¹ It repealed the *Decree of 21 December 1955 on the organization and scope of activities of the Citizens' Militia*. In art. 6 clause 1 of the *Act on the office of the Minister of the Interior...*, the concept of operational and reconnaissance activities was introduced into the Polish legal order for the first time. They were to be carried out in order to take reconnaissance actions, and to prevent and detect crimes and offenses as well as other activities detrimental to state security or public order. The most important for these considerations is the content of art. 15 of the said Act. Clause 1 of the same article states in a very general way that the Citizens' Militia may use the help of citizens in the performance of their tasks in the field of state security and public order. On the other hand, it was indicated in clause 2 that in case of loss of life or damage to health by the persons referred to in clause 1, or in case of damage to the property of those persons, they are entitled to compensation on the terms set out by the Council of Ministers by the regulation. Without a doubt, art. 15 clause 1 of the *Act on the office of the Minister of the Interior...*, is the first statutory regulation indicating the possibility of using the help of citizens. It should be understood as both the cooperation of informers with law enforcement authorities, the performance of tasks commissioned by officers, and the provision of information. However, this provision does not contain any restrictions as to the form of cooperation undertaken, and thus may include various categories of informers, as well as consultants or assistants.³² It is characterized above all by considerable generality and laconicism, as well as lack of statutory definitions of basic concepts, which resulted from treating operational and reconnaissance activities as secret also in the normative layer.³³

Throughout the Polish People's Republic period, law enforcement agencies cooperation with informers was undoubtedly considered the most important form of operational work. Due to the laconicism of statutory provisions already indicated, these secret operating instructions regulating the activities of the Citizens' Militia were of key importance for officers during the implementation of operational and reconnaissance activities. Despite the fact that these instructions defined the ways in which Citizens'

³¹ Journal of Laws 1983, no. 38, item 172.

³² See P. Herbowski, *Poufne osobowe źródła informacji. Aspekty kryminalistyczne i prawno-dowodowe*, Warszawa 2018, pp. 31–32.

³³ A. Taracha, *Czynności...*, *op. cit.*, p. 47.

Militia officers should conduct their operations, they were often abandoned, which resulted from the excessive number of regulations in this area. The basic criterion in the practice of operational activities was their effectiveness, not compliance with the legal order of the Polish People's Republic.³⁴ The best example was the possibility of recruiting informers on the basis of incriminating materials, i.e. confirming the fact that a selected person had committed a criminal act and justifying the initiation of criminal proceedings against him/her.³⁵ Intra-departmental regulations allowed for excluding such a person from a criminal case,³⁶ while none of the provisions of the criminal procedure of course ever gave any grounds for such actions.

ANALYSIS OF CURRENT LEGISLATION

The political changes that began in Poland in 1989 have also brought about significant transformations in the tasks facing police services. First of all, they adapted the way of their functioning to the standards of a democratic state. However, the appearance in the police law³⁷ of provisions granting police services the authority to conduct operational and reconnaissance activities met with numerous voices of opposition. They resulted from the misidentification of these activities with those previously carried out by the Security Service (SB). Particular controversies during legislative work on police laws were caused by the possibility of cooperation with informers, commonly referred to as agents. There have even been proposals to completely abandon this form of operational work, because recruiting agents among citizens of the rule of law is immoral and should therefore be banned.³⁸ Only people who did not have elementary knowledge about combating crime could postulate depriving police services of the opportunity of using this most important form of operational work. The implementation of this postulate would cause that these services could be helpless in the

³⁴ See T. Ruzikowski, *Instrukcje Pracy Operacyjnej Aparatu Bezpieczeństwa 1945–1989*, Warszawa 2004, pp. 4–5.

³⁵ H. Dominiczak, *Organy bezpieczeństwa PRL 1944–1990: rozwój i działalność w świetle dokumentów MSW*, Warszawa 1997, pp. 41–43.

³⁶ See K. Otłowski, *Nadawanie charakteru procesowego materiałom operacyjnym*, Warszawa 1982, pp. 111–118.

³⁷ This term refers to acts which were adopted in 1990 and include *Act on the office of the Minister of the Interior*, *Act on the Police*, *Act on the Office for State Protection and Act on Border Guard* – see A. Taracha, *Czynności...*, *op. cit.*, p. 52.

³⁸ R. Netczuk, *Tajny...*, *op. cit.*, p. 108.

face of numerous new threats that appeared during the period of political transformation. Ultimately, however, the parliament accepted a solution that seemed at that time a compromise, since the powers of the police services to cooperate with informers intentionally took the form of a general norm. This allowed to leave such a controversial institution in the Polish legal order.³⁹ Thus, at that time, it was a successful operation of entering into the police laws the possibility of using the assistance of persons who were not policemen or officers. However, it is difficult to consider it as a big progress that such a mention on this form of operational work was made in a universally binding act of law,⁴⁰ given its laconic form, and the fact that it shamefully hid itself from the public in the following wording:

- art. 22 paragraph 1 of the *Act of 6 April 1990 on the Police*:⁴¹ the Police in carrying out their tasks may use the assistance of citizens who are not policemen;
- art. 13 section 1 of the *Act of 6 April 1990 on the Office for State Protection*:⁴² the Office for State Protection in carrying out of their tasks may use the assistance of citizens who are not their officers;
- art. 9 item 3 of the *Act of 12 October 1990 on the Border Guard*:⁴³ officers in carrying out their tasks may use the assistance of citizens who are not officers.

At present, the main part of the regulations contained in the competence acts of the police services relating to cooperation with informers is as follows:

- art. 22 paragraph 1 of the *Act of 6 April 1990 on the Police*:⁴⁴ the Police in carrying out their tasks may use persons not being policemen;

³⁹ R. Netczuk, *Tajny...*, *op. cit.*, p. 108.

⁴⁰ Cf. M. Chrabkowski, *Metody pracy...*, *op. cit.*, pp. 487–527.

⁴¹ Journal of Laws 1990, no. 30, item 179.

⁴² *Ibidem*, item 180.

⁴³ Journal of Laws 1990, no. 78, item 462.

⁴⁴ Journal of Laws 2019, items 161, 125, 1091.

- art. 9b paragraph 1 of the *Act of 12 October 1990 on the Border Guard*:⁴⁵ the Border Guard in carrying out of their tasks may use the assistance of persons other than its officers;
- art. 36 paragraph 1 of the *Act of 24 August 2001 on Military Gendarmerie and military ordering bodies*:⁴⁶ the Military Gendarmerie, when carrying out operational and reconnaissance activities, may use the assistance of persons who are not soldiers of the Military Gendarmerie;
- art. 25 paragraph 1 of the *Act of 9 June 2006 on the Central Anti-Corruption Bureau*:⁴⁷ the Central Anti-Corruption Bureau in carrying out of their tasks may use the assistance of persons who are not Central Anti-Corruption Bureau officers.

Even a cursory analysis of the provisions contained in these acts does not leave the slightest doubt that both in the case of provisions introduced in 1990 and the ones currently applicable, we are dealing only with an update of the content of art. 15 of the *Act of 14 July 1983 on the office of the Minister of the Interior and the scope of activities of bodies subordinate to him*. This results from the fact that minor changes have been made to these provisions over the past thirty years, most likely for fear of public reaction. For example, in 1995, during the amendment to police laws, in which a number of new forms of operational work were introduced,⁴⁸ the word “citizens”, referring to those whose help the officers could use, was replaced by the word “persons”. It seems that behind this change there could be, on the one hand, a desire to cut off from the term used in communist times. On the other hand, the term “citizen” could be interpreted narrowly, meaning that only the use of Polish citizens’ assistance is allowed. In the face of a significant increase in the number of criminal offenses⁴⁹ whose perpetrators were also members of organized criminal groups, including the Russian ones, the

⁴⁵ *Ibidem*, items 147, 125, 235, 1091.

⁴⁶ *Ibidem*, items 518, 730.

⁴⁷ Journal of Laws 2018, items 2104, 2399; Journal of Laws 2019, items 53, 125, 1091.

⁴⁸ See A. Taracha, *Czynności...*, *op. cit.*, pp. 64–71.

⁴⁹ See J. Warylewski, *Wymiar sprawiedliwości karnej w Polsce – diagnoza statystyczno-kryminologiczna wybranych aspektów*, [in:] *Między nauką a praktyką prawa karnego. Księga Jubileuszowa Profesora Lecha Gardockiego*, Warszawa 2014, pp. 335–360.

literal treatment of this provision questioned the possibility of recruiting for cooperation persons without Polish citizenship.

The notion of “citizen/person providing assistance”, used in police acts, raises numerous reservations, as the possibility of using informers’ help during operational work is not explicitly stated.⁵⁰ This is because it is a very camouflaged form and it is impossible to indicate that e.g. the content of art. 22 of the *Act of 6 April 1990 on the Police* only applies to assistance during operational activities. An analysis of all regulations contained in police acts gives grounds for stating that the use of the assistance of persons who are not policemen/officers may also take place in the case of procedural activities, such as detention, examination of the crime scene, search, but also during administrative and prevention operations.⁵¹ The above provision also does not specify what kind of tasks can be performed by people assisting the Police, both it in the form of providing information and sharing an apartment or a vehicle.⁵² Further doubts concern the concept of “citizen/person assistance” and are caused by the fact that, e.g. in art. 15 paragraph 1 point 7 of the *Act of 6 April 1990 on the Police*, policemen performing the activities referred to in art. 14. paragraph 1, and therefore also operational and reconnaissance activities, may request in emergency situations any citizen/person to provide ad hoc assistance. The difference between “citizen’s ad hoc assistance” and “the assistance of a person who is not a policeman” is only noticeable in the existence of an operational fund from which informers are remunerated and, in another mode, in the occurrences of compensation claims for the damage to health or to property. In the case of “citizen’s ad hoc assistance”, this is done through a civil trial, while in the second case a special compensation procedure⁵³ is provided for in police laws in art. 22 paragraph 4 of the *Act of 6 April 1990 on the Police*. It should be noted that there are, however, numerous doubts as for the reality of this compensation procedure.⁵⁴

Another important point should be mentioned concerning the possibility of making a distinction between informers and other persons secretly providing assistance to police services, e.g. consultants or supportive persons.

⁵⁰ A. Taracha, *Czynności...*, *op. cit.*, p. 60.

⁵¹ R. Netczuk, *Tajny...*, *op. cit.*, p. 110.

⁵² T. Hanausek, *Ustawa o Policji*, Kraków 1996, p. 65.

⁵³ A. Taracha, *Czynności...*, *op. cit.*, p. 62; cf. R. Giętkowski, *O udzielaniu pomocy policji przez osoby fizyczne*, “Przegląd Policyjny”, 2008, no. 1, pp. 38–45.

⁵⁴ See P. Herbowski, *Poufne...*, *op. cit.*, pp. 99–103.

This is not an easy task because all these people are most often covered by some collective term and identified with informers or secret collaborators. This is caused by the fact that police legislation in a very imprecise way determines the use of assistance from people being outside these services.⁵⁵

The continuous decrease in the efficiency and quality of operational activities since 1990 has contributed to the start of legislative work on drafts of acts on operational and reconnaissance activities. The vast majority of the problems that contributed to this should be qualified as directly or indirectly related to cooperation with informers. These works lasted for many years, but were not successful,⁵⁶ and the problems that were the reasons for initiating them are still waiting for an appropriate regulation. In particular, this applies to recruiting informers based on the fear of criminal prosecution, or to the way of dealing with items the informers have provided. It is impossible to understand what caused that the designers of these projects, despite many years of work, did not find the right solutions to problems related primarily to cooperation with informers.⁵⁷ It is particularly interesting that none of the drafts of the act on operational and reconnaissance activities contains a suitable definition of such cooperation, and it is not even expressed directly.⁵⁸ Moreover, important issues related to subjective restrictions of cooperation were omitted, among which it is possible to point to, among others, cooperation with juveniles⁵⁹ that is still not regulated in the operational instructions. The necessity to specify in an open legal act the tasks and categories of informers was also ignored. It may be of significant importance during a possible assessment of their

⁵⁵ A. Taracha, *Czynności...*, *op. cit.*, pp. 197–198.

⁵⁶ See Z. Rau, *Problematyka czynności operacyjno-rozpoznawczych w świetle przeprowadzonych badań. Dziesięć lat prac nad ustawą – legislacyjna rozważka czy porażka?*, [in:] *Przestępczość w XXI wieku – zapobieganie i zwalczanie. Problemy prawno-kryminologiczne*, E. Pływaczewski, W. Filipkowski, Z. Rau (eds), Warszawa 2015, pp. 365–431.

⁵⁷ Z. Rau, *Problematyka prowadzenia pracy operacyjnej Policji a bezpieczeństwo prawne policjanta i prokuratora*, "Prokurator", 2007, no. 1, pp. 17–21; also Z. Rau, *Czynności operacyjno-rozpoznawcze w polskim systemie prawa – działania w kierunku uniwersalnej ustawy*, [in:] *Praktyczne elementy zwalczania przestępczości zorganizowanej i terroryzmu. Nowoczesne technologie i praca operacyjna*, L. Paprzycki, Z. Rau (eds), Warszawa 2009, pp. 712–745.

⁵⁸ A. Taracha, *O „Projekcie ustawy o czynnościach operacyjno-rozpoznawczych”*, "Annales Universitatis Mariae Curie-Skłodowska, sectio G (Ius)", 2009/2010, vol. 56/57, pp. 163–179.

⁵⁹ See P. Herbowski, *Poufne...*, *op. cit.*, pp. 163–166.

credibility by the prosecutor's office and courts, in connection with making decisions regarding the implementation of operational control, controlled handing over or acceptance of property benefits.

CONCLUSIONS

As the above considerations have shown, the creation of an appropriate legal framework for their operational and reconnaissance activities is crucial for the effective functioning of police services whose activities are directed at detecting crimes and prosecuting their perpetrators. The most important form seems to be undoubtedly cooperation with informers. It mainly serves to collect information about sources of evidence and to direct evidence activities, such as interrogations or search. In the vast majority of situations, it also determines the possibility of carrying out operational control, controlled handing over or acceptance of property benefits, or an implicitly supervised shipment. Without this cooperation it is hard to imagine an effective fight against organized crime groups, or even common crime. It is advisable to cut off from the Polish People's Republic tradition of making all the regulations connected with operational work secret. Revealing operational instructions to public may contribute to the increase of civic guarantees against unjustified or excessive use of operational activities. In addition, as the experience of the Second Polish Republic and other countries show, transparency of such legal regulations does not decrease the effectiveness of these activities in any way. Therefore, only specific operational activities of authorized services should be classified. Regulating the issues indicated in the article would contribute to the increase of the effectiveness of cooperation with informers, and consequently, the level of citizens' security. This would also ensure the legal security of operational officers conducting such cooperation.

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