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POLICE AND OTHER AGENCIES INSIDE AND OUTSIDE
THE C.J.S. IN POLAND

by

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I - General remarks

The presentation of the working principles of the police against the background of the structure and work of the agencies directly or indirectly connected with the criminal justice system /C.J.S./ has to be preceded by some remarks of a general nature. The concept of the criminal justice system itself in Poland differs from this notion as understood in other countries. The system in Poland comprises - besides courts, public prosecution and police which traditionally belong to it - commissions for examining petty offences which may impose penalties of deprivation of liberty up to three months, penalties of limitation of liberty or fines. The system also includes some local administrative organs - considering their responsibilities with respect to preventing and fighting criminality.

Owing to the vast responsibilities of these agencies, we are confronted with manifold problems belonging to such fields of social life as protection of public order and safety, work of law enforcement agencies and justice and pre- and postdelictual prophylaxis in a very broad sense. Thus it seems advisable to concentrate chiefly on the role played in the criminal justice system by the Civic Militia, on the relationship of its organs to other organs of this system, on the general principles of cooperation of the police with agencies inside and outside the administration

of justice. It is equally worth noting that the work of the police in Poland is based on rather precise legal provisions. They define the procedure and the scope of the Civic Militia's work, the range of its authority towards citizens. An analysis of these provisions may prove very helpful to show the Civic Militia's role and position in the criminal justice system.

The police (Militia) in Poland are a homogeneous, centralised armed force subordinate to the government, destined to fight and counter-act common criminality. The position of the Civic Militia thus defined means that it is organisationally independent from local administrative organs.

A particular characteristic of agencies of a police type in a socialist state - thus in Poland - is a consequence of the specific legal and political structure of the state. One of its manifestations is the name. After five years of the Nazi occupation, after regaining independence, the name "police", accepted elsewhere for agencies for public safety and order, had been rejected. The motivation was to be found in the traditions of the Polish police before the Second World War and in the period of the Nazi occupation during which the Nazis succeeded in having the Polish Police collaborate with them. Today the service, being an equivalent - as far as the range and way of functioning is concerned - of a police force, bears the name of the Civic Militia.

It also seems necessary to define the characteristic and principal tasks of the Civic Militia - otherwise the analysis of the Civic Militia's relationship to the agencies of criminal prosecution, justice and state administration would not be complete and clear.

According to the decree of December 21, 1955, on the structure and responsibilities of the Civic Militia, which constitutes legal grounds for the Militia's activities - "the Civic Militia is an armed force responsible for maintaining public order and safety". The Civic Militia is an independent unit within the Ministry of the Interior. The independence manifests itself in the separation of its agencies from other agencies of the Ministry of the Interior and in the assignment of a separate organizational status within the framework of the Ministry. The Civic Militia is composed of its Headquarters in Warsaw and territorial units reflecting the administrative division of the country.

The Civic Militia's responsibilities may be divided into two groups - the first concerning the work of the agencies of criminal prosecution and justice, the second belonging to the sphere of state administration.

Resulting from these functions, the following tasks of the Civic Militia are primarily:

- a) tasks connected with safeguarding public order and safety,
- b) tasks connected with criminal prosecution,
- c) tasks connected with safeguarding the correct progress of the administration of justice,

- d) tasks connected with the execution of penal measures,
- e) tasks connected with organizing and carrying out pre- and post-delictual prophylaxis.

In all these fields of the Civic Militia's work, without exception, other agencies are involved as well. It is the task of this report to define the functional and legal relationship between the Civic Militia and these agencies. Two groups of responsibilities connected with the Civic Militia's legal status and its position within the system of state organs, on the one hand, and its role within the system of organs destined to protect order and security of the state on the other hand, may be discerned. To the first group belong the powers based on specific legal provisions assigning the Civic Militia a certain amount of independent power. The second group includes the activities which may be defined as auxiliary to the powers and duties of other organs.

The relatively most independent section of the Civic Militia's work within the first group of tasks are activities destined to safeguard public order and safety. An example of a typically auxiliary task of the Civic Militia may be the participation of its officers in criminal proceedings, especially at their judicial and executive stage.

II - The organs of the Civic Militia in the protection of public safety and order

The tasks of the Civic Militia in the field of protection

of public safety and order have been defined in the decree of December 21, 1955, quoted earlier. The Civic Militia's responsibility in this field is to counteract all occurrences endangering public safety and order. The Militia's action in this field may take the form of administrative decisions of a general, and more often, individual character. The decisions may be made under the authority of a specific law and within its limits only.

A most specific example of the Civic Militia's work in this field is the administrative supervision of the observance of Law. The provision of article 6 of the decree quoted states that it is the Civic Militia's duty "to supervise within the limits set by law the observance of legal provisions in the field of trade, fire-control, sanitation and health services in open places, public order in railways, public baths and on beaches and other public places ..., to supervise the observance of traffic rules". The same group includes the Civic Militia's powers in the enforcement of the provisions on registration, weapon licences, etc.

The independence of the Civic Militia in this field manifests itself also in powers to make individual administrative decisions such as weapons licences for individuals, issuing passports, permission to pass borders within the so-called "small tourist" traffic.

To be able to accomplish these tasks, the Civic Militia has been equipped with some important powers beginning with the right to

check citizens' identity, questioning them in connection with an offence up to the right to detain them for 48 hours under Civic Militia arrest. The Civic Militia is also empowered to impose fines as administrative penalties, it may also submit a case of a petty offence to be examined by the commission on petty offences acting in units of local administration.

As far as the maintaining of public order and safety is concerned, the connection of the Civic Militia's responsibilities with those of local administrative agencies, the people's councils, should be pointed out.

The Constitution of the Polish People's Republic has charged the people's council with caring for maintaining public order and cooperating in consolidating the state's defense system and security (Art. 39). Thus the state defense and security have been included, by legal ruling of the highest order in the responsibilities of the administrative agencies, i.e., the people's councils. The cooperation of the Civic Militia, which has to be considered a specialized organ for maintaining public order and safety, with respective units of the people's councils is a consequence of the general structural principles of the socialist state as well as of legal provisions in force - particularly of the law on the people's councils. Most important in this respect are the guidelines of central political and administrative organs which constitute an auxiliary link in coordinating the work of the Civic Militia and that of the people's councils.

Organizationally, the cooperation of the Civic Militia with the people's councils is facilitated by:

a) participation of the Civic Militia's officers in the work of the people's councils. It is one of the ways in which the people's council is informed about the state of public order and safety in its territory. It is by these means that the Civic Militia uses the people's councils to mobilize other organs and social organizations for cooperation in protecting public order and safety.

b) submission to the council's sessions of reports on the state of public order and safety in a given territory by the Civic Militia's organs.

For examining the problems of public order and safety, the councils appoint commissions or working groups "on public order and safety". The commissions and working groups are vested with the power to control and supervise the work of the Civic Militia - they control the execution of the councils' resolutions by the Civic Militia's organs, they examine the reports of the heads of the Civic Militia's territorial units and give their opinions on them, etc. The appointed representatives of the council have a right to exercise social control in the Civic Militia's units, to check the state of the Civic Militia's premises and arrests, etc. Then the suggestions made by the Commission are the basis for

passing adequate instructions aiming at the elimination of the shortcomings and imperfections which have been noticed.

The observations and remarks on the work of the Civic Militia in this field are directed by the commission to the appropriate authority and administrative organs of a respective level. (1)

It should be added that the principle of the Civic Militia's activities is full cooperation with the society in fulfilling its tasks. However it is not a one-sided action or an action entirely subordinate to the Civic Militia. The society and its organizations have control and supervisory powers guaranteed by law. Forms of this control are varied and they are implemented within the people's councils and their commissions' activities. The inspection of the forms and methods of the Civic Militia's work and a social evaluation of their effectiveness by the representatives of the community is always a principle concerning the work of the Civic Militia within the criminal justice system. The observation of this principle is a guarantee of the Civic Militia completing its tasks in the field of safeguarding public order and safety and, at the same time, of the citizens' rights.

(1) Especially compare art.55 of the law on the people's councils and paragraph 3 subpar. 1 of the law of the Council of Ministers of February 17, 1955 - Polish Monitor no 19, item 181 .

Summing up, it should be noted that the relation between the people's councils and the Civic Militia in the field of safeguarding order and safety has a twofold character. Firstly, it consists in control and supervisory powers of the council over the Civic Militia (because the council is in charge of a given territory). Secondly, it consists in close cooperation within a particular sphere.

III - The tasks of the Civic Militia in connection with criminal prosecution

In the field of the prosecution of offences, the role of the Civic Militia has a twofold character. Firstly, the Civic Militia has independent powers, provided for by the regulations, (especially by the code of penal procedure) in connection with detecting offences and safeguarding the course of the proceedings (e.g., safeguarding the evidence of the offence). Secondly, the Civic Militia is an auxiliary organ of the public prosecutor's office during the course of preparatory proceedings.

In accordance with the law (art. 265 par.1 of the code of penal procedure) the Civic Militia is authorised to conduct an inquiry, on its own initiative, "in cases where carrying out an investigation is not obligatory"¹).

(1) Carrying out an investigation is obligatory in cases of crime (i.e., acts for which the penalty is not less than 3 years) and in cases of some misdemeanours e.g., against the principal political and economic interests of the state and some offences against health.

In this case the Civic Militia agencies, having learnt about an offence, may institute an investigation, notifying the public prosecutor about it without delay. (art. 257 par.2 of the code of penal procedure). Here the law stresses the superior and leading role of the public prosecutor over that of the Civic Militia agency.

However, in every case, before instituting an investigation "within the limits necessary for safeguarding the traces and evidence of the offence committed before they may get lost or distorted" the Civic Militia may inspect, in case of need, in the presence of experts, search ... and undertake other actions of great urgency, not excluding blood and discharge tests. (art. 267 of the code of penal procedure). If the actions have been undertaken in a case in which carrying out an investigation is obligatory, the Civic Militia is under obligation to transmit the case without delay to the public prosecutor.

Also in the proceedings on juvenile cases the juvenile court may entrust the Civic Militia organ with carrying out an investigation. All actions in this respect are carried out under the supervision of the juvenile court.¹⁾

In other cases the public prosecutor may entrust the Civic Militia with carrying out the whole investigation or one within certain limits

(1) A feature of the Polish proceedings in juvenile cases is a concentration of the court's participation in all the steps of criminal proceedings.

(art. 264 par.2 of the code of penal procedure) and also with carrying out specific activities in the course of the investigation. This does not include presenting the suspect with the charges against him or complementing the decision on presenting the charges (art. 264 par.3 of the code of penal procedure).

The public prosecutor who has charged the Civic Militia with carrying out certain functions, supervises their implementation, and within this scope, he is authorized to give orders and instructions which may refer e.g., to the manner, time and place of carrying out certain activities. Consequently, the public prosecutor may be present during the carrying out of these activities by the Civic Militia officers (e.g., during questioning of a suspect or a witness, searching premises or inspection). A superior and supervisory role of the public prosecutor in relation to the activities of the Civic Militia, undertaken in the course of preparatory proceedings, is a characteristic feature of the Polish system of prosecuting and detecting offences.

IV - The powers of the Civic Militia in the course of judicial and executory proceedings

As far as judicial and executory proceedings are concerned, the activities of the Civic Militia consist solely in carrying out the orders of the court and other agencies (e.g., the public prosecutor or executive bodies). Legal grounds for giving orders to the Civic Militia

organs in this area are provided by the provisions of the code of penal procedure and the penal executive code, as well as art.6 par.6 and 7 of the decree of December 21, 1955, according to which the Civic Militia organs are under an obligation to carry out the orders of the court and the public prosecutor in cases connected with criminal proceedings. The obligation formulated in the decree on the structure and responsibilities of the Civic Militia to carry out the orders of the court and the public prosecutor in court and executory proceedings has been specified in the provisions of the code of penal procedure and the penal executive code. We shall quote here the most essential provisions.

The Civic Militia is under an obligation to:

- a) deliver, by order of the court, summonses, notifications and other documents to the parties to the proceedings and to other persons (art. 116 par.2 of the code of penal procedure).
- b) carry out the orders of the court and instructions of the public prosecutor connected with escorting to the court or another place the accused and other persons (e.g., a witness).
- c) be present in the court room if the accused is under arrest and if its presence, according to the court's opinion, is necessary from the point of view of the security and order of the court session.
- d) perform activities indicated by the court, aiming at maintaining peace and order in the rooms of the court building.

If the court or public prosecutor have indicated to the Civic Militia the manner and means of carrying out a given action, such an instruction is binding for the Civic Militia organ. In other cases the Civic Militia organ applies the methods and means provided for in the binding or customarily accepted regulations in a given situation.

The penal executive code (in art. 11 par.1) states that "the Civic Militia within executory proceedings carries out the orders of the court and public prosecutor". All state and social institutions are under an obligation, within their scope of activities, to render assistance to the Civic militia organs which implement the court's orders within the executory proceedings. The courts and public prosecutor's offices use the assistance of the Civic Militia officers on a large scale, above all , to convoy sentenced persons to penal institutions, pre-trial detention houses or social readaptation centres. The orders in this respect are directed by the court or public prosecutor's office through the appropriate Civic Militia headquarters.

In cases when the accused (sentenced person) stays in hiding or has disappeared, the Civic Militia organs are under obligation, on their own initiative, to establish his whereabouts, to arrest him and bring him to the penal institution.

The questions connected with carrying out the court's orders are regulated in detail by "the Rules of convoying service" (Order of

the Headquarters of December 30, 1969, no.12/59).

Moreover, the Civic Militia organs are under obligation to notify the court without delay about all obstacles and difficulties connected with putting the sentenced person in a penal institution.

V - The tasks of the Civic Militia in the field of prophylaxis and cooperation with other organs and organisations outside the Criminal Justice System

The tasks before the Civic Militia in the field of preventing criminality and eliminating the reasons for particular types of offences constitute, at the present stage, an essential part of the Civic Militia's activities in Poland. The activities, consisting in preventing negative phenomena in social life, are concerned with many areas and therefore various preventive methods and measures should be applied. This sphere of activity requires close cooperation with state and social institutions at various levels.

The Civic Militia activities in this field consist in an educational and explanatory role with a view to exercising an influence on the society. This concerns all the activities undertaken by the Civic Militia and especially acts of an individual nature.

The Civic Militia's process of punishing by means of fines should be combined, in a given situation, with adequate explanatory, and

especially preventive actions. Proper information about the content of the binding regulations is of paramount importance. Cooperation of the Civic Militia with social and youth organisations, with schools and kindergartens is worth mentioning here. Meetings with the representatives of individual social groups are very important for forming the legal conscience and culture of young people, individual professional groups, etc.

The scope of the cooperation of the Civic Militia with other organs and organisations outside the criminal justice system results from a great number of tasks of the Civic Militia in the above mentioned fields, especially in the field of safeguarding public order and safety and pre- and post-delictual prophylaxis. This cooperation of the Civic Militia with social organs and institutions is far less formalized and assumes various forms, depending on the sphere of the Civic Militia's activities.

First of all, those organisations cooperating with the Civic Militia and to which some of the tasks of safeguarding public order and safety have been transferred, should be mentioned, namely the Voluntary Fire Brigades. Within their competence, the members of the Voluntary Reserve of the Civic Militia have such tasks as: to patrol public places, to watch over the safety on public roads, waters and railways, keep order during various meetings and ceremonies. Attention is being paid to the activities of specialized units of the Voluntary Reserve of

the Civic Militia dealing with road traffic, order and safety of railways, waters and territories near waters. Moreover, the members of the Voluntary Reserve exercise voluntary guardianship over children and young people whom they provide with assistance and care by means of organizing educational, entertainment and recreational activities, summer play centres and camps. They cooperate in this field not only with the Civic Militia but also with the people's councils and schools.

Members of the Voluntary Reserve of the Civic Militia may appear as public prosecutors at trials before commissions on petty offences, and they enjoy the rights of a party (lodging appeals, etc.).

The cooperation of the Voluntary Reserve of the Civic Militia with the Civic Militia consists in assisting the Civic Militia organs in fulfilling their tasks in the field of safeguarding public order and safety. It is worth noting that in the course of fulfilling their duties, the members of the Voluntary Reserve of the Civic Militia enjoy the same legal protection as the Civic Militia officers do.

The second organ closely cooperating and complementing the activities of the Civic Militia are the Voluntary Fire Brigades. They exercise fire-control in villages and various institutions, help in rescue operations and conduct preventive activities in this important sphere of life. Members of Voluntary Fire Brigades, together with the Civic Militia officers, exercise fire-controls in institutions, offices and on farms. They supervise the observation of regulations in this field.

The cooperation of the Civic Militia with such organisations as the National Defense League or the Polish Red Cross is of a similar nature.

The cooperation of the Civic Militia with educational authorities and schools takes place on a different plane. It assumes various forms, and it mainly consists in cooperating with schools in the field of preventing the social maladjustment and criminality of juveniles - thus it has a preventive character. In this field, the Civic Militia organs cooperate with youth organisations in the schools (Polish Scouts' Association and Socialist Association of Polish Youth). The Civic Militia runs Foyers for Juveniles where, under the supervision of educators, children who need immediate educational intervention are kept. As far as this kind of activity is concerned, the Civic Militia is subordinate to the juvenile court. The Civic Militia also cooperates with the guardianship court and signals the necessity to institute court proceedings in cases where parental authority is not being exercised, is being abused or parents are not properly discharging their duties.

In this field, the broad range of activities undertaken by the Civic Militia organs is worth stressing, as well as its close cooperation with various organs inside and outside the criminal justice system. This shows the important role of the Civic Militia in Poland.

In the paper the following works have been referred to:

- 1 - Dr. E. Ura, The Civic Militia in the Polish People's Republic, Legal position and scope of activities, Warsaw 1975.
- 2 - Dr. E. Ura, Cooperation of the Civic Militia with the People's Councils, Warsaw, 1973.
- 3 - Dr. E. Ura, Legal Forms of the Civic Militia Activities, Warsaw, 1974.
- 4 - Doc. Dr. M. Lipka, Juvenile Delinquency in Poland, Warsaw, 1971.
- 5 - M. Grzegorzcyk, Structure and Responsibilities of the Voluntary Reserve of the Civic Militia, Warsaw, 1969.
- 6 - St. Walczak, Penitentiary law, outline of the system, Warsaw, 1972.
- 7 - St-Pawela, The code of Penal Procedure, Commentary, Warsaw, 1973.



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