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# PROTECTION OF PERSONS AND PROPERTY IN POLAND – HISTORICAL REFLECTIONS

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## Abstract

This article presents the basics of the security system in Poland after the political transformation in the late 80's/early 90's. The development of personal and property security gained momentum in the 90's. After the political change, the lack of adequate regulations for the operation of security companies required the introduction of legal regulations that systematized the creation and operation of security companies as well as the requirements for people working in organizations. In Poland, the private security services sector emerged at the end of the 1980s. The first concessions for performing services in this area were issued after 1 January 1989 on the basis of the law on economic activity. Until the entry into force of the law on the protection of persons and property, the private security sector operated, inter alia, on the basis of the provisions of the aforementioned law on economic activity and the criminal code.<sup>1</sup> Due to the changes occurring both in the law and in terms of changing hazards, the regulations did not correspond to the new socio-economic reality of the 1990s. As a result, on 22 August 1997, the lower house of parliament of the Republic of Poland passed an act on the protection of persons and property. The 'privatisation of security' is, one of the means for improving public safety. The private security sector contributes significantly to improving security, but only if appropriate legislative solutions are in place and proper control is exercised over the activities of this sector.

## Keywords

security, public security, license, concession, protection of persons and property

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<sup>1</sup> G. Gozdór, Prywatyzacja bezpieczeństwa – sposób na poprawę stanu bezpieczeństwa i porządku publicznego?, [in:] M. Miłosz, Bezpieczeństwo a informatyka, biznes i edukacja, Wyższa Szkoła Przedsiębiorczości i Administracji w Lublinie, Lublin 2004, p. 165.

## Introduction

A response to the growing demand for security in the 1990s. In the 1990s there was a systematic increase in the number of security agencies being set up that offered services of protection of persons and property.<sup>2</sup> In Poland, the private security services sector emerged at the end of the 1980s. The first concessions for performing services in this area were issued after 1 January 1989 on the basis of the law on economic activity<sup>3</sup>. Until the entry into force of the law on the protection of persons and property, the private security sector operated, inter alia, on the basis of the provisions of the aforementioned law on economic activity and the criminal code.<sup>4</sup> Due to the changes occurring both in the law and in terms of changing hazards, the regulations did not correspond to the new socio-economic reality of the 1990s<sup>5</sup>. In addition, the lack of regulation resulted in a number of abuses that were pointed out in a 1997 report by the Supreme Audit Office, which accelerated work on the law. As a result, on 22 August 1997, the lower house of parliament of the Republic of Poland (Sejm RP ) passed an act on the

protection of persons and property<sup>6</sup>, in which the following were defined: areas, objects and devices subject to mandatory protection; principles for the creation and functioning of internal security services; principles for conducting business activity in the scope of services related to the protection of persons and property; qualifications and authorisations required for security personnel, as well as issues related to supervision over the functioning of the protection of persons and property.<sup>7</sup> The act has been amended many times, adapting the original legislation to meet security needs in today's security environment.<sup>8</sup>

In the first decade of the 21st century, the protection of persons and property was also conducted on the basis of: the act of 2 July 2004 on freedom of economic activity<sup>9</sup> and based on the ordinances of the Minister of Internal Affairs and Administration: of 27 May 1998 on the types of documents required for submitting applications for a concession to conduct economic activity in the field of services related to the protection of persons and property<sup>10</sup> and of 27 May 1998 on the documents required for conducting economic activity in the field of services

<sup>2</sup> W. Bejgier, B. G. Stanejko, *Ochrona osób i mienia*, Warszawa 2010, p. 19.

<sup>3</sup> Ustawa z dnia 23 grudnia 1988 o działalności gospodarczej, *Journal of Laws of 1988*, no. 41, item 324.

<sup>4</sup> G. Gozdór, *Prywatyzacja bezpieczeństwa – sposób na poprawę stanu bezpieczeństwa i porządku publicznego?*, [in:] M. Miłoś, *Bezpieczeństwo a informatyka, biznes i edukacja*, Wyższa Szkoła Przedsiębiorczości i Administracji w Lublinie, Lublin 2004, p. 165.

<sup>5</sup> J. Lipski, *Służby ochrony osób i mienia w systemie bezpieczeństwa publicznego – wybrane aspekty prawno-organizacyjne* at [www.dobrauczelnia.pl/upload/File/KONFERENCJE/bezpieczenstwo\\_obywatela](http://www.dobrauczelnia.pl/upload/File/KONFERENCJE/bezpieczenstwo_obywatela), accessed on 02.01.2021.

<sup>6</sup> Ustawa z dnia 22 sierpnia 1997 r. o ochronie osób i mienia, *Journal of Laws 1997* No. 114 item. 740.

<sup>7</sup> See: R. Socha, B. Kaczmarczyk, A. Szvajca, *Zarządzenie kryzysowe w systemie bezpieczeństwa publicznego RP*, Kraków 2014.

<sup>8</sup> The act has been amended many times, with the consolidated text published in the *Journal of Laws of 2021*, item 1995.

<sup>9</sup> Ustawa z dnia 2 lipca 2004 r. o swobodzie działalności gospodarczej, *Journal of Laws 2004*, No. 173, item 1807.

<sup>10</sup> Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 27 maja 1998 r. w sprawie rodzajów dokumentów wymaganych przy składaniu wniosku o udzielenie koncesji na prowadzenie działalności gospodarczej w zakresie usług ochrony osób i mienia, *Journal of Laws 1998*, No 69, item 457.

related to the protection of persons and property and its storage time<sup>11</sup>.

## Methodological and methodical assumptions

The aim of this study is characterising the area of security, which is the private sector of personal in Poland and property protection and how the terms are defined in legal acts. The major issue, whose solution is described in this article, is phrased as a question: how the private sector of personal and property protection developed in Poland

Theoretical research methods were used throughout the research process, including analysis, synthesis, defining and inference. The study literature was examined, with a focus on Polish monographs, printed scientific publications, and online sources, as well as specialist textbooks, instructions, and recommendations, as well as appropriate legislative rules. In particular, the present study was conducted by means of legal acts analysis.

## Protection of persons and property – definition

Under the act, guarding persons was meant as an action intended to ensure the protection of life, health and personal inviolability. Property protection, on the other hand, involves activities that prevent crimes and offences against property, as well as preventing damage resulting

from such incidents and preventing unauthorised access into protected areas. Protection of persons and property is conducted in the form of:

1. Direct physical protection:
  - permanent or one-time;
  - consisting of constant surveillance of signals transmitted, collected and processed by electronic alarm devices and systems;
  - consisting of escorting cash and other valuables or dangerous goods.
2. Technical protection, consisting of:
  - installation of electronic alarm devices and systems signalling threats to the protected persons and property, and their operation, maintenance and repair at sites where they are installed;
  - installation, operation, maintenance, repair and emergency opening of devices and means of mechanical protection at sites where they are installed<sup>12</sup>.

This provision, despite the aforementioned numerous amendments, has remained practically unchanged.<sup>13</sup>

## A concession (licence)

Starting a business in the field of personal and property security services required obtaining a concession (licence) defining the scope and form of

<sup>11</sup> Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 27 maja 1988 r. w sprawie dokumentacji wymaganej przy prowadzeniu działalności gospodarczej w zakresie usług ochrony osób i mienia oraz czasu jej przechowywania, *Journal of Laws* 1998, No 69, item 458.

<sup>12</sup> Act of 22 August 1997..., art. 3.

<sup>13</sup> See: R. Socha, *Agencje ochrony osób i mienia w polskim porządku prawnym. Prywatyzacja bezpieczeństwa, cz. I*, „Informator Obrony Cywilnej i zarządzania kryzysowego” 2011, nr 1/2011, pp. 11 – 14; R. Socha, *Agencje ochrony osób i mienia w polskim porządku prawnym. Prywatyzacja bezpieczeństwa, cz. II*, „Informator Obrony Cywilnej i zarządzania kryzysowego” 2011, nr 2/2011, pp. 12 – 15.

conducting such services. A concession is an authoritative administrative act issued by the concession authority, which authorises the concessionaire to carry out strictly specified economic activity. Concession is introduced for activities which are of particular importance with regard to state security or that of citizens or other important public interests. The licensed (covered by concession) activities are listed in the act of 2 July 2004 on freedom of business activity. Pursuant to article 46 of the said act, the licensed (covered by a concession) activities included protection of persons and property. The concession was granted for a fixed period of no less than 5 years and no more than 50 years. The legislation also regulates in detail the procedure for issuing a limited number of concessions and for holding a tender for concessions in a given industry when the number of companies willing to receive a concession that meet the criteria required by law was greater than the number of concessions to be granted. In practice, these provisions applied and still apply, for example, to concessions for radio and television stations.

Commencing and pursuing economic activity in Poland is free for everyone on the basis of equal rights, subject to the conditions stipulated by law. Foreign persons from EU member states, the Swiss Confederation and EFTA member states undertaking business activity in Poland are subject to the same regulations as Polish citizens, and therefore have the same rights and obligations as Polish entrepreneurs. At the same time, the provisions of the act of 4 March 2010 on the provision of services within the

territory of the Republic of Poland<sup>14</sup> did not apply to the performance of personal and property security services.

At that time, entrepreneurs who were individual could apply for a concession if they held a second-degree physical security officer licence or a second-degree technical security officer licence, which was changed on 1 January 2014. In the situation where entrepreneurs who were not natural persons (corporate bodies) applied for a licence, the second level licence had to be held by at least one person who was a partner (shareholder) in a corporate body, a member of the management board, a proxy or a representative established by the corporate body to manage the activity specified in the licence<sup>15</sup>. A concession was issued by the Provincial Police Chief competent for the applicant's place of residence<sup>16</sup>. A concession to conduct business activity in the field of personal and property security services was issued by way of administrative decision, by the minister in charge of internal affairs, at the request of the entrepreneur, after consultation with the competent regional police chief. The opinion of the

<sup>14</sup> Ustawa z dnia 4 marca 2010 r. o świadczeniu usług na terytorium Rzeczypospolitej Polskiej, Journal of Laws of 2010, No 47, item 278.

<sup>15</sup> Informator dla przedsiębiorców ubiegających się udzielenie koncesji Ministra Spraw Wewnętrznych i Administracji na prowadzenia działalności gospodarczej w zakresie usług ochrony osób i mienia, Warsaw 2010, at [http://bip.mswia.gov.pl/portal/bip/4/26/Ochrona\\_osob\\_i\\_mienia.html](http://bip.mswia.gov.pl/portal/bip/4/26/Ochrona_osob_i_mienia.html), accessed 01.01.2021.

<sup>16</sup> The principles and procedure for issuing licences are set out in articles 26-29 of the act on the protection of persons and property and in the ordinance of the Minister of Internal Affairs and Administration of 4 June 1998 on the type and procedure for issuing physical security employee licences and technical security employee licences, as well as the procedure and frequency of issuing opinions on security employees by the police authorities, Journal of Laws of 1998, No. 78, item 511.

police chief, unless a specific provision of law stipulated otherwise, was merely an assessment of the facts, using the statutory or subjective criteria of the opinion issuer, which did not bind the authority deciding in the subject matter of the case. It was only part of the evidence in the administrative case, albeit it was undoubtedly important for the final outcome<sup>17</sup>. It is also worth noting that conducting business activities in the field of personal and property security services without a concession constituted an offence under article 49 of the act on personal and property protection.

An application for a concession should include Entrepreneur's business name, the designation of their seat and address or place of residence and address, and the address of the main place of business activity; the number in the register of entrepreneurs or in the business register and the tax identification number (NIP), as well as the designation of the type and scope of business activity for which the concession is to be granted.

The administrative procedure for granting of a concession by the Minister of Internal Affairs and Administration lasted approximately 2 months, provided that all the required documents were submitted with the application and the opinions of other authorities required by law were received. If, in the course of the proceedings, there was a need to supplement the evidence in the case, this period could be

extended. The Minister's administrative decision to grant or refuse a concession to operate a business was issued immediately after the conclusion of the administrative proceedings conducted in this regard. The provisions of article 11(3)-(9) of the act on the freedom of economic activity of 2 July 2004 did not apply to the proceedings. Addressing the issue of granting concessions, it should be noted that in justified cases it was possible to apply for an engagement to grant a concession, known as a 'promissory declaration'. The promissory declaration, which specified the conditions under which a concession could be applied for, also took the form of an administrative decision and was issued after an administrative procedure of about 2 months, for a period of 6 months from the date of its issue<sup>18</sup>.

In the case of dissatisfaction with the final decision of the Minister of Internal Affairs and Administration, in accordance with the instructions included in the decision, the following appeal procedures were available: a request for reconsideration of the case concluded with a final decision, and an appeal against the decision to the Provincial Administrative Court after exhausting the said appeal procedure<sup>19</sup>. In addition, any complaints and requests as to the administrative proceedings and the manner of operation of the Department of Permits and Concessions of the Ministry of Internal Affairs and Administration could be addressed to the Director of the Department of Permits and Concessions or the Complaints and Requests Section of the

<sup>17</sup> Who can operate a business in the field of personal and property security services and under what conditions? <http://e-prawnik.pl/biznes/prawo-spolek/dzialalnosc-gospodarcza/artykuly/kto-i-na-jakich-zasadach-moze-prowadzic-dzialalnosc-gospodarcza-w-zakresie-uslug-ochrony-osob-i.html>, accessed: 23.12.2021 r.

<sup>18</sup> Ibid.

<sup>19</sup> Ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi, Journal of Laws of 2002, No. 153, item 1270.

Control Department of the Ministry of Internal Affairs and Administration.

When discussing this issue it should be noted that according to art. 18 sec. 3 of the act on the protection of persons and property, the entrepreneur was obliged to notify the Minister of Internal Affairs and Administration, within 14 days, about the change of the following legal and factual circumstances: the name of the entrepreneur, registered office and address or address of residence; number in the register of entrepreneurs or in the business register and the tax identification number (NIP); names and surnames of partners (shareholders) or members of the management board, proxies and representatives, if any, with indicated persons holding a second degree license and places of conducting business activity. Entrepreneurs engaged in the protection of persons and property were also required to: notify the concession authority of the commencement of new business activity; keep and maintain records of the security personnel employed and the contracts concluded and performed; produce these documents at the request of bodies authorised to conduct inspections; observe the obligation of written form for contracts concluded within the scope of the business activity, as well as continuously comply with the obligation for persons connected with the company to hold the relevant second degree licence if the licence was obtained by an entrepreneur (corporate body) other than an individual. In addition, entrepreneurs were required to: provide security staff with uniform markings that allowed them to be identified, and to identify the entity that hired them; ensure that security guards wore clothing that allowed them

to be identified and to identify the entity that hired them in cases where they carried assigned firearms. It should be noted that the clothing of security personnel should have markings that distinguish them visibly from uniforms under special protection or whose patterns were introduced under separate regulations.

The withdrawal of the concession to perform economic activity in the field of personal and property security services took place in the event when a final judgement was issued that banned the entrepreneur from performing the economic activity covered by the concession, or if the entrepreneur did not commence the activity covered by the concession within the set time limit despite the request of the concession authority, or permanently ceased conducting the economic activity covered by the concession. In addition, the Minister of Internal Affairs and Administration revokes the concession or changes its scope in the event that the entrepreneur, within the set time limit, does not correct a factual or legal state inconsistent with the conditions set out in the concession, or with the provisions governing the business activity covered by the concession; as well as in the event that they grossly violate the conditions set out in the concession, or other conditions of performing the business activity covered by the concession, as defined by law. An entrepreneur whose concession was revoked for these reasons could apply for a new concession for the same scope of activity no earlier than three years after the revocation decision was issued. In turn, a discretionary premise for revocation of a concession is a threat to the

defence and security of the state or the security of citizens, as well as declaration of bankruptcy of the entrepreneur.

### **Areas, facilities, equipment and transports which are important for the defence, the economic interest of the state, public security and other important interests of the state**

Areas, facilities, equipment and transports which are important for the defence, the economic interest of the state, public security and other important interests of the state shall be subject to compulsory protection by specialised armed security formations or appropriate technical protection. In the area of national defence, the areas, facilities and equipment include in particular: special production facilities and facilities where research and development or construction work is conducted with respect to such production; facilities producing, renovating and storing armaments, military equipment and devices; and warehouses of state reserves. In turn, the areas, facilities and equipment in the area of protection of the state's economic interest include, in particular: establishments directly related to the extraction of mineral resources of strategic importance for the state; seaports and airports; banks and enterprises producing, storing or transporting monetary values in significant quantities.

The third category, that is facilities and areas important in terms of public safety, include in particular: plants, fa-

cilities and equipment of significant importance for the functioning of urban agglomerations, the destruction or damage of which may pose a threat to human life and health and to the environment, in particular power and heating plants, water sources, waterworks and sewage treatment plants; plants which use, produce or store nuclear materials, radioactive sources and waste, toxic, intoxicating, explosive or chemical materials highly susceptible to fire or explosion; fuel pipelines, power and telecommunications lines, dams and sluices and other open-air devices, the destruction or damage of which may pose a threat to human life or health, the environment or cause serious material damage<sup>20</sup>.

According to the regulations, the tasks of protection of persons and property carried out by internal security services, i.e., armed and uniformed teams of entrepreneur's staff or appointed organisational security units,<sup>21</sup> and by entrepreneurs who have obtained a concession in the field of protection of persons and property, are performed by security personnel. Security personnel could include persons holding a physical security staff licence or a technical security staff licence and performing security tasks as part of internal security service or on behalf of an entrepreneur who had obtained a concession to conduct business activity in the protection of persons and property, or persons performing security tasks to an extent not requiring a licence. Today, by security personnel we mean persons entered on the list of qualified physical security personnel

<sup>20</sup> Act on protection of persons and property..., art. 5.

<sup>21</sup> Ibid, article 2, point 8.

or qualified technical security personnel and performing security tasks within an internal security service or on behalf of an entrepreneur who has obtained a concession to conduct economic activity in the field of protection of persons and property, or a person performing security tasks to an extent not requiring entry on these lists on behalf of an entrepreneur who has obtained a concession to conduct economic activity in the field of protection of persons and property.<sup>22</sup>

## Employee license

The performance of physical protection or technical security tasks therefore required<sup>23</sup> physical protection staff members or technical security staff members to possess a licence. Licences could be divided into first- and second-degree licences. It was not necessary to obtain a licence in order to work as a security staff member to an extent not mentioned above, as the legislator imposed the licensing requirement only on those groups of employees who could perform certain activities exercising the rights held under the act on the protection of persons and property<sup>24</sup>.

First-grade licence for security staff was necessary to perform activities related to the protection of persons and property carried out in the form of direct phys-

ical protection by: members of specialist armed protection formations; members of teams escorting money and other valuable or dangerous objects; security personnel performing direct activities related to the protection of persons; persons supervising and controlling the work of physical protection employees without a licence; security personnel with the right to use means of direct coercion or firearms; security personnel performing tasks in areas, facilities and devices subject to mandatory protection. Whereas a second-degree physical security staff licence entitles the holder to perform the protection of persons and property carried out in the form of direct physical protection and to develop a security plan, as well as to organise and manage teams of physical security personnel. Additionally, a first -degree licence for a technical security personnel authorised the performance of activities related to the protection of persons and property carried out in the form of technical protection. A second-degree technical security staff licence additionally entitled the holder to develop technical security projects and to organise and manage teams of technical security staff. After Poland's accession to the European Union, not only a citizen of Poland, but also a person who held the citizenship of another member state of the European Union or a member state of the European Free Trade Association (EFTA) – a party to the agreement on the European Economic Area - could apply for a licence to become a physical or technical security staff member..

The minimum content of course programmes for licence applicants included theoretical subjects in the general field

<sup>22</sup> See: P. Lubiewski, R. Gwardyński, *Ochrona zabytków przed zagrożeniami terrorystycznymi, kryminalnymi, militarnymi i pozamilitarnymi*, Kraków 2018.

<sup>23</sup> A licence is a permit to perform tasks related to the protection of persons and property to an extent required by law.

<sup>24</sup> How to become a security staff member? at <http://e-prawnik.pl/biznes/prawo-pracy/pozostale-3/artykuly/jak-zostac-pracownikiem-ochrony-strona-13.html>, accessed: 06.09.2020 r.

of protection of persons and property, and practical subjects in firearms training, self-defence and intervention techniques. Courses for physical security officers could be conducted under the rules set out in the regulations on the educational system as well as those set out in the regulations on economic activity.

The subject matter and scope of obligatory examination subjects were specified in the ordinance of the Minister of Internal Affairs and Administration of 7 August 1998 on types of diplomas and certificates issued by schools and other educational institutions, which confirmed the acquisition of specialist qualifications in the field of protection of persons and property, the minimum content of programmes for first- and second-degree physical protection personnel, the scope of obligatory examination subjects, the mode of examination, the composition of the examination board and the manner of conducting the examination<sup>25</sup>.

The examination conducted by the board consisted of a theoretical test and a practical test. The theoretical examination consisted of a written and an oral examination, for which a total mark was given.

It is also worth noting that a security staff member who was to be entrusted, under the act on the protection of classified information of 22 January 1999, with the tasks of a security representative or security division staff had to additionally fulfil the requirements set out in that act. According to the act on the protection of classified information, a representative for protection of classified information could be a person who had Polish citi-

zenship and at least secondary education, and who had obtained security clearance entitling them to access classified information and had undergone training in the protection of classified information. However, the secondary education requirement was not applied to security division staff. The condition for admission to work or for performing duties in positions involving access to classified information was that a security clearance procedure be carried out in respect of the candidate, which ended with issuance or refusal of a security clearance.

## Conclusion

In summary, until the amendment to the act on the protection of persons and property came into force in 2014, the services offered by the private security sector included physical protection of facilities and premises, escorting money and valuables, guarding persons and protection of mass events. Hence, the 'privatisation of security' was then, and still is, one of the means for improving public safety. The private security sector contributes significantly to improving security, but only if appropriate legislative solutions are in place and proper control is exercised over the activities of this sector.

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<sup>25</sup> Ibid.

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