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ENTREPRENEURS LICENCED TO PROVIDE PERSONAL AND PROPERTY SECURITY SERVICES IN THE PREVENTION OF THE SPREAD OF A COMMUNICABLE HUMAN DISEASE

Abstract

March 2020 brought a major change in the functioning of public and economic spaces both in Poland and around the world, triggered by the spread of the human communicable disease COVID-19. Regrettably, though first perceived as temporary and not particularly affecting society and the economy, it has become long-lasting and led to a series of downright revolutionary changes. One such change was engaging entrepreneurs licensed to provide personal and property security services in managing the emerging public security threat. The COVID-19 crisis has necessitated the participation of personal and property security personnel in efforts to prevent the spread of the disease, primarily within protected premises. However, it appears that there is a lack of legal basis enabling private security personnel in Poland to carry out tasks in public security threat conditions, including during mass outbreaks of human communicable diseases.

Key words

protection of persons, protection of property, human communicable disease, COVID-19, public security

Introduction

Since the dawn of time, man has taken measures to prevent and counter emerging threats. Initially, threats to national security were limited to armed aggression by neighbouring countries. However, other facets of national security threats have been identified over the years. At the same time, it was concluded that ensuring the security of the state and its citizens requires addressing challenges, exploiting opportunities, and eliminating threats. The change in the traditional form of threats, previously of a predetermined and mostly military nature, and the emergence of asymmetric threats evolving along with civilisation's progress are influencing a transition in the approach to national security. Hence, the preparedness of security actors, enabled by an accurate identification of the nature of the threats, allows efficient action to be taken in emergencies. To guarantee development in a hazard-free environment requires a range of endeavours and the involvement of many stakeholders.

Today, the area of universal security, closely linked to other security domains, including public security, plays a vital role in national security. The term „universal security” can be construed in several ways, including as circumstances that ensure the protection of the life and limb of citizens and national assets

from the effects of natural and technological disasters.¹ In this context, one must note that the activities ensuring the protection of the life and limb of citizens and national assets, i.e. those aimed at the broadly understood protection of persons and property², are also the responsibility of entrepreneurs licenced to provide personal and property security services.

Entrepreneurs licenced to provide personal and property security services

As part of the present considerations, it is also necessary to clarify the term „entrepreneur licenced to provide personal and property security services”, as used in the title. Pursuant to the Act of 22 August 1997 on the protection of persons and property,³ personal security services consist in activities aimed at ensuring the safety of life⁴ and limb and bodily integrity. In turn, property security services involve preventing crimes and offences against property and damage resulting from such events, as well as preventing unauthorised persons from entering protected premises. Personal and property security services are provided in the form of direct physical protection and technical security. Direct physical protection may be carried out on a

1 B. Wiśniewski, J. Prońko, *Bezpieczeństwo powszechne*, [in:] *Bezpieczeństwo wewnętrzne RP w ujęciu systemowym i zadań administracji publicznej*, B. Wiśniewski, S. Zalewski (scientific eds.), Bielsko-Biała 2007, p. 24.

2 See: M. Feltynowski, M. Langer, *The role of EASeR project in enhancing search and rescue teams performance*, “Safety & Fire Technology” 2019, Volume 53, Issue 1, p. 130-143.

3 Act of 22 August 1997 on the protection of persons and property (Dz.U. /Journal of Laws/ of 2021, item 1995), Article 2(6), Article 15.

4 In itself, the phrase „safety of life (...)” already prompts the need to subject it to analysis.

permanent or ad hoc basis; it may also consist in the constant surveillance of signals transmitted, collected, and processed in electronic alarm devices and systems, and the escorting of money and other valuable or hazardous items. Technical security involves installing electronic alarm devices and systems to detect threats to protected persons and property, as well as their operation, maintenance, and repair at the sites where they are installed, and the installation of mechanical security devices and means, including their on-site operation, maintenance, repair, and emergency opening.

Pursuant to the Act in question, security tasks on „behalf of an entrepreneur licenced to provide personal and property security services”⁵ or as part of an internal security service, i.e. armed and uniformed personnel employed by entrepreneurs or organisational units to protect them, ⁶shall be performed by security officers, i.e. persons performing security tasks and entered on the list of qualified physical security personnel or qualified technical security personnel or persons performing security tasks to the extent not requiring entry on these lists. In turn, the applicable legal definition of an entrepreneur is contained in the Act of 6 March 2018 — *Entrepreneurs’ Law*⁷. According to the Act, an entrepreneur is a natural or legal person or an organisational unit that is not a legal person, which is granted legal capacity under

a separate act and performs business activity. Partners in a civil law partnership are also entrepreneurs to the extent of their business activities. Considering the above, an entrepreneur licenced to provide personal and property security services may be a natural person, a legal person, an organisational unit that is not a legal person or a partner in a civil law partnership pursuing economic activity in the field of personal and property security services under a licence they obtained. To standardise terminology, this article assumes that an entrepreneur licenced to provide personal and property security services is to be construed as a personal and property security agency (PPSA).

Research question

One of the aims of science is to seek to know the objective truth about reality, to satisfy human cognitive needs and to improve people’s practical activities.⁸ „Creative work mostly consists in finding or establishing new connections between already known phenomena, things, their parts, or between known concepts or other reflections of phenomena”.⁹ The newer components and connections, the more creative the work is. The output of any creative work is „some kind of work, that is, an objective result”,¹⁰ which is the objectified act of the human creator. Research into the use of PPSAs for tasks related to

5 Act of 22 August 1997 *on the protection of persons and property...*, Article 2(6).

6 *Ibidem*, item 8.

7 Act of 6 March 2018 — *Entrepreneurs’ Law* (Dz.U. /Journal of Laws/ of 2023, item 221), Article 4.

8 See J. Ratajewski, *Elementy naukoznawstwa i główne kierunki rozwoju nauki europejskiej*, Katowice 1993, p. 13.

9 J. Pieter, *Praca naukowa*, Katowice 1960, p. 22.

10 *Ibidem*, p. 22.

managing public security threats in the form of human communicable disease outbreaks is still a unique activity. In this respect, the sole notable publication is Waldemar Szuwała-Banach's doctoral thesis titled „People and Property Protection Security Agencies Within the System of National Security”, written at the War Studies University under the academic supervision of dr hab. Andrzej Czupryński. The author believes that the lack of research initiatives in this area of national security is due to such things as the fact that the generally applicable laws and regulations do not directly stipulate that PPSAs are organisations responsible for ensuring public security in the Polish crisis management system.

Historical perspective of the protection of persons and property in Poland

The response to the growing demand for security in the 1990s was a systematic increase in the number of personal and property security agencies on the market. In Poland, the private security services sector emerged as early as the late 1980s. The first licences to provide services in this area were issued after 1 January 1989 under the Act on business activity¹¹. Until the entry into force of the Act on the protection of persons and property, the private security sector

operated under the provisions of the Act on business activity, the Criminal Code, and other acts. However, due to the ongoing legal transition and evolving risks, these regulations did not correspond to the new socio-economic reality of the 1990s.¹² Moreover, the lack of regulation resulted in multiple cases of abuse, as noted in a 1997 report by the Supreme Audit Office, which accelerated the development of the new Act. Consequently, on 22 August 1997, the Sejm of the Republic of Poland passed the Act on the protection of persons and property,¹³ which sets out the areas, facilities and equipment subject to mandatory protection; the principles for the establishment and functioning of internal protection services; the principles for conducting business activity in the field of personal and property protection; the required qualifications and licences of security personnel, as well as issues related to supervising personal and property protection. The Act has been amended several times, bringing the original legislation into line with the need to ensure safety in today's security environment.

In the first decade of the 21st century, personal and property security services were also provided under the Act of 2 July 2004 on freedom of economic activity¹⁴ and Regulations of the Minister of the Interior and Administration of 27 May 1998 on the types of documents required when applying for a licence to carry out business activity in the field of

11 Act of 23 December 1988 *on economic activity* (Dz.U. /Journal of Laws/ of 1988, No. 41, item 324).

12 J. Lipski, *Służby ochrony osób i mienia w systemie bezpieczeństwa publicznego – wybrane aspekty prawno-organizacyjne*, www.dobrauczelnia.pl/upload/File/KONFERENCJE/bezpieczenstwo_obywatela (access: 02.01.2023 r.).

13 Act of 22 August 1997 *on the protection of persons and property* (Dz.U. /Journal of Laws/ of 1997 No. 114 item. 740).

14 Act of 2 July 2004 *on freedom of economic activity* (Dz.U. /Journal of Laws/ of 2004, No. 173, item 1807).

personal and property security¹⁵ and of 27 May 1998 on the documents required when carrying out business activity in the field of personal and property security and the duration of its storage¹⁶.

At the time, starting a business in personal and property security required a licence specifying the scope and form of the business. Entrepreneurs who were natural persons could apply for a licence if they held a Level II Physical Security Officer licence or a Level II Technical Security Officer licence; however, this was changed on 1 January 2014. In cases where the applicant was not a natural person, the Level II licence had to be held by at least one person who was a partner in a commercial company, a member of the management board, a proxy or a proxy appointed by the entrepreneur to manage the activities specified in the licence.¹⁷ The security officer licence was issued by the Voivodeship Police Chief with jurisdiction over the applicant's place of residence. On the other hand, the licence to conduct business activity in the field of personal and property security was issued, by way of an administrative decision, by the minister in charge of the interior at the entrepreneur's request and after consultation with the relevant Voivodeship

Police Chief. Unless a special legal provision gave it a different character, the Police Chief's opinion was merely their assessment of the facts based on statutory or subjective criteria and was not binding on the decision-making authority. While undoubtedly relevant to the final decision, this was but one piece of evidence in the administrative case.¹⁸ Notably, operating in the field of personal and property security without a licence constituted an offence under Article 49 of the Act on the protection of persons and property.

According to the legal solutions of the time, the tasks of personal and property security, performed by internal protection services, i.e. armed and uniformed personnel employed by entrepreneurs or organisational units to protect them,¹⁹ were performed by security personnel. Security personnel could be any holders of a Physical Security Officer licence or Technical Security Officer licence and performing security tasks as part of an internal security service or on behalf of an entrepreneur licenced to operate in the field of personal and property security or persons performing security tasks to the extent not requiring a licence. Today, as mentioned earlier, a security officer is construed as a person entered

15 Regulation of the Minister of the Interior and Administration of 27 May 1998 on the types of documents required when applying for a licence to carry out business activity in the field of personal and property security (Dz.U. /Journal of Laws/ of 1998, No. 69, item 457).

16 Regulation of the Minister of the Interior and Administration of 27 May 1998 on the documents required when carrying out business activity in the field of personal and property security and the duration of its storage (Dz.U. /Journal of Laws/ of 1998, No. 69, item 458).

17 Informator dla przedsiębiorców ubiegających się udzielenie koncesji Ministra Spraw Wewnętrznych i Administracji na prowadzenie działalności gospodarczej w zakresie usług ochrony osób i mienia, Warsaw 2010, http://bip.mswia.gov.pl/portal/bip/4/26/Ochrona_osob_i_mienia.html (access: 01.01.2023 r.).

18 Who can operate a business in the field of personal and property security services and under what conditions?, <http://e-prawnik.pl/biznes/prawo-spolnek/dzialalnosc-gospodarcza/artykuly/kto-i-na-jakich-zasadach-moze-prowadzic-dzialalnosc-gospodarcza-w-zakresie-uslug-ochrony-osob-i.html> (access: 23.12.2022 r.).

19 *Act on the protection of persons and property...*, Article 2(8)

on the list of qualified physical security officers or qualified technical security officers and performing security tasks as part of an internal security service or on behalf of an entrepreneur licensed to provide personal and property security services, or a person performing security tasks to the extent not requiring entry on these lists, acting on behalf of an entrepreneur licensed to provide personal and property security services.

Thus, carrying out physical or technical security tasks required one to hold a Physical or Technical Security Officer's licence.²⁰ Two variants of the licences were available: Level I and Level II. Still, working as a security officer to the extent not mentioned above did not require a licence. This was because the legislator imposed the licensing requirement only on those groups of employees who could perform certain activities using the authorisations granted to them under the Act on the protection of persons and property.²¹

A Level I Physical Security Officer licence was necessary for the following persons to carry out personal and property security services in the form of direct physical protection: members of specialist armed security outfits; members of teams escorting money and other valuable or hazardous items; security officers directly involved in personal protection; persons supervising and controlling the work of unlicensed physical security officers; security officers entitled to use force or firearms; security officers performing tasks in areas,

facilities and devices subject to mandatory protection. On the other hand, the Level II Physical Security Officer licence would entitle one to perform personal and property security services in the form of direct physical protection and to develop a security plan, as well as to organise and manage physical security personnel teams. In contrast, the Level I Technical Security Officer licence authorised one to carry out personal and property security services in the form of technical security. A Level II Technical Security Officer licence would also allow the holder to develop technical security plans and organise and lead technical security personnel teams.

Summary

The situation surrounding the COVID-19 outbreak caused by the SARS-CoV-2 virus has resulted in security officers, especially those on duty at the premises, being reassigned to tasks related to disease prevention, including controlling the temperature of people entering the premises. One key conclusion emerged as a result of the present research: it is necessary to amend Article 3 of the Act of 22 August 1997 on the protection of persons and property by adding item 3 reading as follows: „The protection of persons may also be carried out in other forms, if this results from the necessity to protect human life and limb”. If no such amendment is passed, there will be no legal basis for engaging private security personnel

²⁰ A licence serves as an authorisation to carry out personal and property protection services to the extent set forth in the law.

²¹ How to become a security officer?, <http://e-prawnik.pl/biznes/prawo-pracy/pozostale-3/artykuly/jak-zostac-pracownikiem-ochrony-strona-13.html> (access: 02.01.2022 r.).

in Poland to carry out tasks in public security threat conditions, including during mass outbreaks of human communicable diseases. Further, there is a need to develop a training programme for security personnel to improve their qualifications and skills in dealing with persons infected or potentially infected with human communicable diseases and to establish rules for interacting with other entities involved in disease prevention.

Until the amendments to the Act on the protection of persons and property came into force in 2014, the services offered by the private security sector included the protection of facilities and premises, the escorting of money and valuables, personal protection of individuals and security at mass events. The outbreak of the COVID-19 communicable disease forced security personnel to handle additional tasks. Hence, the „privatisation of security” was and still is one of the ways to improve public safety. Yet, one must note that while the private security sector significantly improves public safety, this is only true if proper legislative solutions and adequate controls are in place to supervise this sector.

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