

**Pawel Gacek**

## **Formal requirements obligatory to serve in the Internal Security Agency and Intelligence Agency – selected aspects**

### **Introductory remarks**

The service in the Internal Security Agency (ABW) and in the Intelligence Agency (AW) constitutes a special kind of employment. Both organizations have military or paramilitary structures. The Polish legislature distinguished for organizations of this kind separate basis of formal employment called appointment (Polish: mianowanie). The hallmark of legal relationships of such kind is that they are regulated comprehensively in labour regulations (so called service pragmatics), i.e. in the *Internal Security Agency and the Intelligence Agency Act of 24 May 2002*<sup>1</sup>. Chapter 5 of the Act entitled *Functionaries service in the Internal Security Agency and in the Intelligence Agency* covers the topic. It is worth mentioning that the legislature anticipated common regulations for ABW and AW when it comes to employment of their employees. As mentioned above legal relationship between a person and ABW or AW starts with an appointment. Before it arises, a candidate for the service is obliged to fulfill a number of formal requirements. Requirements shall not constitute a legal relationship, it means that they do not fall within the scope of this notion. Nevertheless, they exert significant influence on it because they enable the candidate for the service in ABW or AW establish working relationship if he/she meets all the conditions set out for the candidate for the service. It must be added that the conditions have been formulated into a certain catalogue. It is common for all candidates for both ABW and AW. Its goal is to verify whether a candidate is ready to enter the services on the basis of the concerned criteria and on the other side to eliminate those who despite their readiness to enter the services cannot perform such service because of some substantial reasons. One may submit a thesis that the concerned criteria allow to minimize the probability that a random person enters the service.

It should be noted that formal conditions for candidates for the service in ABW or AW as well as for candidates for other military formations have been tightened up in comparison to conditions for candidates in other professions<sup>2</sup>. It is fully justi-

---

<sup>1</sup> *The Internal Security Agency and the Intelligence Agency Act of 24 May 2002*, Journal of Laws 2016, item 1897 as amended (further: u.a.b.w.a.w.).

<sup>2</sup> According to M. Taniewska services' pragmatics should apply certain requirements concerning necessary qualifications, adequate legal status and preferable qualities. The conditions are all identical (the provisions of all of the acts relating this subject) and that makes the topic of candidates' qualities the same for all military or paramilitary services, i.e. Police, Border

fied by the goal that stands at the very heart of creating these organizations. Internal Security Agency is in charge of state's internal security and its constitutional order (article 1 u.a.b.w.a.w.) and Intelligence Agency is in charge of state's external security protection. Both services are special services. The reason of ring-fencing of these formations out of other law enforcement organizations is not random. According to Martin Božek<sup>3</sup>, a decisive criterion when it comes to distinguishing a service as a special service is the scope of its activities. It is crucial and the one and only criterion to make such distinction. Special services, including ABW and AW contrary to other law enforcement organizations, are not dedicated to protect the security of people, including state's citizens, but they are dedicated to protect state's security and its constitutional order. And this has particularly been stated with regard to the aim of these organizations.

Meeting all the requirements necessary to enter ABW or AW enables the candidate only to form a bond with the service. In the end of the procedure he/she becomes an officer. Such candidate does not have a claim to start an employment relationship despite the fact that he has fulfilled all the necessary legal requirements<sup>4</sup>. Article 44 u.a.b.w.a.w. states that (...) *service in ABW or in AW may be performed by the person who*, what clearly indicates only the possibility not duty to employ the candidate who meets formal requirements. This part of the article must be treated as a competence of the proper entity to employ the candidate in ABW or AW not as its duty. A candidate meeting the legal requirements does not have any legal instruments which would allow him/her to initiate such working relationship. They are obliged to meet all the legal criteria needed. During the employment procedure they are verified. If the result is positive it gives the impulse to the employer. It allows the employer to create an employment relationship with the candidate. A contrario, if the result of employment procedure is negative the employer does not have the power to create such employment relationship. The thesis is enhanced by the Prime Minister's Regulation of 29 November 2002 on the Outline questionnaire relating to administrative statement and detailed rules and procedure to be followed by candidates to the service in ABW<sup>5</sup>.

---

Guards, etc., T. Hanausek et al., *Police Law. Commentary*, vol. 1, Katowice 1992, p. 68. In the same vein T. Hanausek, *Act on Police. Commentary*, Kraków 1996, p. 70. In the latter part of this article stance taken in jurisprudence doctrine based on such services' pragmatics shall be recalled.

<sup>3</sup> M. Božek, *Special services. Classification criteria in front of applicable Police Law rules*, „Police Review” 2008, no. 4, p. 156.

<sup>4</sup> No legal provision of the *Police Act of 6 April 1990* (Journal of Laws 2007 no. 43 item 277 as amended) nor any other provisions of the Ministry of Internal Affairs *Regulation of 23 January 2006 on interviewing proceedings in the Police* (Journal of Laws 2006 no. 12 item 77) do not attribute the candidate for a service a claim to be accepted obligatory to the service (sentence of the Court of Appeal of the Wrocław Voivodship of 30 June 2008, IV SA/Wr 93/08, Legalis no. 141825. Although the sentence concerns a candidate to the Police, the main thesis may be applicable *per analogiam* to candidates to/for ABW or AW.

<sup>5</sup> *Regulation of 29 November 2002 by the Prime Minister on the Outline questionnaire relating to administrative statement and detailed rules and procedure to be followed by candidates to the service in ABW*, Journal of Laws 2014 item 61 as amended.

Paragraph 8 of the Regulation states that a candidate to a service who underwent a qualifying procedure positively as far as professional predispositions are concerned, shall be informed of the possibility to enter the service (subparagraph 1) and a candidate to a service who underwent a qualifying procedure negatively as far as professional predispositions are concerned, shall be notified of the rejection decision in writing (subparagraph 2). Similar arrangement has been enclosed in Paragraph 10 of the Prime Minister's Regulation of 24 April 2003 on the Outline questionnaire relating to administrative statement and detailed rules and procedure to be followed by candidates to the service in AW<sup>6</sup>. According to the cited regulations, positive result of the employment procedure gives only the possibility to employ a person and the negative result causes rejection.

It is worth adding that this solution in the service pragmatics (and also in labour regulations of other military services) concerning employment to the service and applying certain requirements does not breach the principles of the Polish Constitution<sup>7</sup>, i.e. the principle of equality before the law (Article 32) and the principle of equal access to public service (Article 60)<sup>8</sup>. According to a Judgment of the Constitutional Court of 19 October 2009<sup>9</sup>:

(...) the principle of equality before the law shall not have an absolute nature and the legislator may depart from it. Such departure will be constitutionally acceptable if the following conditions are fulfilled cumulatively. First, criterion taken by the basis of differentiation has a reasonable relationship with the aim and content of the regulation. Second, the importance of interest at which differentiation is aimed, is proportionate to the importance of interest infringed in the result of accepted differentiation. Third, criterion of the differentiation remains in connection with other norms, rules and constitutional values, which justifies differentiation of similar entities established by the legislation. It should also be noted that it is the legislator who must demonstrate that the exception to such principle of equality before the law is constitutionally acceptable.

---

<sup>6</sup> *Regulation of 24 April 2003 by the Prime Minister on the Outline questionnaire relating to administrative statement and detailed rules and procedure to be followed by candidates to the service in ABW*, Journal of Laws 2014 item 445 as amended.

<sup>7</sup> *The Constitution of the Republic of Poland of 2 April 1997*, Journal of Laws 1997 no. 78 item 483.

<sup>8</sup> „Right under the Article 60 of the Constitution is of formal guarantee nature, because constitutional norms, apart from Polish citizenship requirement, do not enclose other requirements for candidates to posts in public administration. This regulation may not be legal base to bring claims to be employed or for any concrete position or function, Judgment of the Supreme Court, 9 June 2010, III KRS 4/10, LEX No. 611831.

<sup>9</sup> Judgment of the Constitutional Court, 19 October 2004, K 1/04, OTK – A from 2004, no. 9, item 93.

Constitutional Court stated also in a judgment of 9 June 1998<sup>10</sup> that Polish citizens fully exercising their public rights have the right to access public service on equal terms. The right to enter such service does not mean that every Polish citizen fully enjoying public rights must be accepted to the public service<sup>11</sup>. It is the right to access the service on equal basis, not the equal access to public service. According to jurisprudence the right to access the public service on equal basis means that equal opportunities for all candidates applying for a position within a public service should be ensured. *As a consequence, it is transparency and openness of the regulations concerning taking up the position that are goods which are protected*<sup>12</sup>. So each and every candidate for the service in ABW or in AW should meet the same requirements. The employment procedure should be based on the same rules and the same evaluation system. After the requirements are fulfilled and they are confirmed in the employment procedure, a legal relationship may be constituted. On the other hand, even if the candidate complies with all the requirements and goes through the employment procedure successfully, it cannot be definite that he/she will be employed by the service. As stated before, the principle of equal access to public service means equal rules and conditions enabling the access to public service. Though, it does not guarantee that every person applying for a position will be employed in the public service.

It should also be added that the legislator has obliged the candidate to required certain properties before they apply for a service. It means that the candidate has to gain the required properties at the moment he/she applies for the service at the latest. The candidate may not be in the course of gaining the required properties during the application process nor during the working relationship. Lack of one of the required properties or loss of it during the application and employment procedure cause the negative result of the whole employment procedure. In the end, the candidate may not change his/her status, i.e. working relationship cannot be established and he/she cannot gain the status of functionary. Loss of required properties during a working relationship causes the necessity to terminate a contract.

The required properties form a catalogue. It consists of formal conditions necessary to create a working relationship between the candidate to ABW or AW and services as such. The catalogue has been included in the Article 44 u.a.b.w.a.w. There

---

<sup>10</sup> Judgment of the Constitutional Court, 9 June 1998, K 28/97, OTK from 1998, no. 4, item 50, Legalis no. 10441.

<sup>11</sup> In the same vein, Judgment of the Constitutional Court, 14 December 1999, SK 14/98, OTK 1999, no. 7 item 163, Journal of Laws 1999 no. 101 item 1181.

<sup>12</sup> Judgment of the Supreme Administrative Court, 9 July 2009, I OSK 1219/08, Legalis no. 225503 as well as „(...) according to settled case-law, article 60 of the Constitution does not guarantee an admission to public service, nevertheless it ensures every citizen enjoying full public rights, the right to access public service on equal basis. Article 60 of the Constitution constitutes the right to access public service on the same basis.(...) In this context, the aim of Article 60 of the Constitution is to ensure equality of opportunities for people who want to work in public service”, Judgment of the Supreme Court, 13 December 201, III KRS 17/10, Legalis no. 414168.

are five points as *numerous clausus* in it, which means that the catalogue is closed<sup>13</sup>. Originally Article 44<sup>14</sup> u.a.b.w.a.w. sounded as follows. The service in ABW or AW may perform a person who:

- 1) has Polish citizenship only
- 2) enjoys their full civil rights
- 3) with impeccable moral, citizenship and patriotic standing
- 4) offers adequate guarantees of confidentiality as stated in the Act on the Protection of Classified Information of 5 August 2010
- 5) has got at least secondary education and certain professional qualifications as well as physical and mental ability for the service in military organizations, which require particular work discipline, to which the person is ready to submit.

Despite some changes in the Act the catalogue has not been changed much, shortened or extended in particular. The first change concerned Article 44(1) u.a.b.w.a.w. The legislator decided to cross out the term “only” in point 1. The provision got a new text under the Act of 10 June 2016 on anti-terrorist actions<sup>15</sup> in Article 38(10). The new text of Article 44(1) u.a.b.w.a.w. does not require Polish citizenship only. The candidate may have apart from the Polish citizenship also citizenship of other countries.

While the second is connected to Article 44.5 *Provisions implementing the Act on education of 14 December 2016*<sup>16</sup> which implemented a modification that “secondary education” was replaced by “secondary or sectoral education”.

The sequence of conditions in the catalogue does not mean that there is a hierarchy of requirements from the most important to less important one. Each and every condition is equally important and only when the cumulative conditions are met the working relationship may be possible. If there is a lack of one of the conditions the working relationship is not possible and if there already exist one it should be terminated.

It should also be noted that some of the requirements are objective in nature<sup>17</sup>. These are: Polish citizenship, full civil rights, giving adequate guarantees of confidentiality as stated in the Act on the Protection of Classified Information of 5 August 2010, at least secondary education and certain professional qualifications. They shall be verified based on submitted documents, especially Polish citizenship is a subject to verification in cases a person was not born as a citizen of the Republic of Poland and gained Polish citizenship in the course of their life. The same situation concerns the level of education or professional qualifications. Having full civil rights constitutes the lack of court decision which may deprive a person such rights. Impeccable moral,

<sup>13</sup> „It is therefore unacceptable to introduce in other implementing legislation additional requirements for candidates, which are not anticipated by acts”, T. Hanausek et al., *Police Law. Commentary...* p. 69.

<sup>14</sup> *The Internal Security Agency and the Intelligence Agency Act of 24 May 2002*, Journal of Laws 2002 no. 74 item 676.

<sup>15</sup> *The Act on anti-terrorist action of 10 June 2016*, Journal of Laws 2016, item 904.

<sup>16</sup> Journal of Laws 2017 item 60 – the Act came into force on 1 September 2017.

<sup>17</sup> M. Taniewska shall also divide the requirements into objective and subjective ones, T. Hanausek et al., *Police Law. Commentary...* p. 68.

citizenship and patriotic standing or physical and mental ability for the service in military organizations, which require particular work discipline, to which the person is ready to submit shall be evaluated. They are *general clauses* which require individual assessment of the person conducting the evaluation. In principle they are subjective. Service pragmatics concerning employment procedures provide guidance, assessment criteria which erase this subjectivity. They enable to work out consistent criteria to assess all candidates for the service.

### Polish citizenship

The first premise stated in Article 44 (1) u.a.b.w.a.w. is the requirement of Polish citizenship. A candidate may have many citizenships but among them must be Polish one. From the perspective of meeting the requirements having other citizenships does not matter.

The notion of citizenship is not defined by the legislator although it is used many times, especially in the Constitution (Article 34, Article 137, Article 144, Article 233). A contrario, there is an opposite term in the legislation, i.e. the definition of a foreigner has been laid down. In accordance with Article 3(2) of the Foreigner Act<sup>18</sup> of 12 December 2013, a foreigner is every person who does not possess Polish citizenship. The legislator adopted uniform criteria for separation of citizens and non-citizens. It is a Polish citizenship. A foreigner is a person who has got many citizenships (apart from Polish one) as well as a person who has no citizenship at all (stateless person). Having this requirement of Polish citizenship in mind, it is obvious that a foreigner having citizenships of other countries may not apply for a job in ABW or AW.

Meaning of the word “citizenship” has been defined by the doctrine and jurisprudence<sup>19</sup>. Especially worthy of note are views by Jacek Jagielski on citizenship as a legal notion that is relatively permanent in time and space legal bond between a person and a state. The bond determines a nationality which results in a range of reciprocal rights and obligations for a person and a state. Citizenship is therefore a formal and legal construction resulting in substantive legal consequences in terms of rights and obligations to the country and from the country (its authorities) to its citizen<sup>20</sup>. A similar definition presents also Bogusław Banaszak, according to whom a citizenship is a legal relationship between a person and a country which has certain legal consequences both in internal law of the country as well as in international law and also rights and duties common to all having such citizenship unless certain groups have been awarded

<sup>18</sup> *Foreigner Act of 12 December 2013*, Journal of Laws 2016 item 1990 as amended.

<sup>19</sup> Judgment of the Regional Administrative Court in Warsaw, 21 September 2006, IV SA/Wa 507/06, LEX no. 255683.

<sup>20</sup> J. Jagielski, *Polish citizenship. Basic issues*, Warsaw 1998, p. 9 et seq. Compare W. Ramus, *Polish citizenship Law*, Warsaw 1968, p. 5; Z. Kędzia et al. *Police glossary*, by W. Pływaczewski i G. Kędzierska, Szczytno 2001 r., p. 194; L. Wiśniewski, *Fundamental rights and obligations*, by A. Łopatka, Warsaw 1978, p. 5 and R. Bierzanek, J. Symonides, *International Public Law*, 5<sup>th</sup> edition, Warsaw 1998, p. 260.

special status<sup>21</sup>. Meaning of the definitions cannot be limited to rights and obligations of both the country and the person and of the person and the country only. It is necessary to supplement it by a psychic bond between a person and a country which makes the person treat the country as homeland. Feliks Siemiński stresses that such bond lies behind the legal relationship<sup>22</sup>. This remark is vital to the topic because it justifies the fact that the obligation of having Polish citizenship is among other requirements for candidates for the service in ABW or in AW. In the definitions presented by doctrine representatives it is only legislative effect of the bond between a person and a country highlighted which is the source of rights and obligations between those two entities. Exposing the psychic bond between a person and a country guarantees that the person will fulfill his/her obligations. It makes the order of fulfilling the obligations towards the country does not come only from the legal norm but from the real existing inner need of the person. This, in turn, enables the two institutions work properly. Allowing a Polish citizen to work for ABW or AW not only makes sense but is necessary. It is the right psychic attitude to duties for the country and legal norms that enables to perform the service in both agencies in the right way. The psychic bond determines loyalty, obedience, sacrifice, commitment and dedication and gives the inner belief that realization of the duty belongs to this particular person.

Individuals who do not have Polish citizenship cannot apply for the service until they get it. The way they get it does not matter. The candidate for the service can get the citizenship by operation of law, having parents who are Polish citizens (Article 34(1) of the Polish Constitution and Article 14 in connection with Article 4 of the Act on Polish Citizenship of 2 April 2009<sup>23</sup>) or any other way listed in the Act on Polish Citizenship (naturalisation, classification as Polish citizen or re-instatement of Polish citizenship – Article 4 u.ob.pol.) or in the Act on Repatriation of 9 November 2000<sup>24</sup>. It also does not matter when the acquisition of citizenship took place (from the perspective of Article 44(1) u.a.b.w.a.w.). The one and only requirement is to have Polish citizenship. Natural-born individuals will not be any way privileged than people who became nationalised in other way. The only difference between natural-born individuals and those who became nationalized later on is that the evaluating entity during employment process must check and confirm the candidate's date of citizenship acquisition. There is no need to verify it when it comes to natural-born subjects.

It is not necessary nor pertinent to address all ways of acquisition of citizenship because it goes beyond the scope of the subject. Nevertheless, it is interesting to note some elements of the procedures leading to acquisition of citizenship. Worthy of note is Article 21(4) of the Act on Polish Citizenship that legally binds the minister of internal affairs to consult the request with the Police, the ABW and with other organs – if

---

<sup>21</sup> B. Banaszak, *Constitutional law*, 4<sup>th</sup> edition, Warsaw 2008, p. 436 et seq.

<sup>22</sup> F. Siemieński, *Constitutional Law*, Warsaw–Poznań 1980, p. 120.

<sup>23</sup> *The Act on Polish Citizenship of 2 April 2009*, Journal of Laws 2012 item 161 as amended – (further: u.ob.pol).

<sup>24</sup> *The Act on Repatriation of 9 November 2000*, Journal of Laws 2014 item 1392 as amended.

needed, before passing it to the President of Poland. The possible information which may be essential to decide on the acquisition of citizenship are used by the Minister of Interior office to prepare a notice concerning the request. The same requirement of Article 36(2) of the Act on Polish Citizenship concerns the procedure of recognition a person as a Polish national. In this case the consultation obligation applies to a Province governor (voivod) who consults the request with the Chief of Regional Police, the Director of Regional Branch of ABW and with other organs – if needed, whether denisation (naturalization) does or does not poses any threat to a defense or state security or to public order security. The same applies to provisions of Article 43(2)(3) of the Act on Polish Citizenship, before issuing a decision on reinstatement of citizenship the Minister of Interior is obliged to consult General Police Headquarters, the Chief of ABW and other organs – if needed, whether denisation does or does not poses any threat to a defense or state security or to public order security. The office should also consult whether a foreigner who applied for denisation had acted to the detriment of Poland, particularly to the detriment of its independence and sovereignty or had dealt with human rights violations. The office of Minister of Interior has the right to address the Chief of National Remembrance Institute – Prosecution of Crimes against Polish Nation Committee about the information they hold regarding the person applying for reinstatement of citizenship.

In case of naturalization, of recognition a person as a Polish national or reinstatement of citizenship information from the above mentioned institutions will not matter in terms of fulfilling the condition of having citizenship by the candidate. Nevertheless, such information can be of great importance by assessing other attributes which are required by working relationship, like impeccable moral, citizenship and patriotic standing, giving adequate guarantees of confidentiality as stated in the Act on the Protection of Classified Information or physical and mental ability for service in military organizations, which require particular work discipline, to which the person is ready to submit. A candidate fulfils the requirement from Article 44(1) u.a.b.w.a.w. as long as he/she has got a Polish citizenship. *A contrario*, a candidate cannot apply for the service of he/she lost somehow Polish citizenship. It may only be a result of a renunciation of citizenship (Article 34(2) of the Constitution and Article 46 u.ob.pol.). The actual loss of citizenship shall be carried out as from 30 days after the President issues a determination on the issue or earlier than 30 days if the determination states so. Theoretically, a candidate for the service in ABW or in AW fulfills the citizenship requirement even if he/she applies for renunciation of citizenship after having applied for the service. Article 44(1) u.a.b.w.a.w. is clear on the matter of time frame. Starting point of the naturalization is the date of a President's determination (Article 26 of the Act on Polish Citizenship.). On this particular day a foreigner becomes nationalized. If the procedure of recognition a person as a Polish national is concerned, a foreigner is awarded this status on the day the Province governor's (voivod) decision becomes final. In case of reinstatement of citizenship a foreigner is awarded this status on the day the Minister's decision becomes final (Article 39(2) of the Act on Polish Citizenship). In case of repatriation procedure



a foreigner becomes nationalized the day on which the Province governor's (voivod) decision becomes final. It is about the decision of the governor competent for the place of planned residence (Article 16 (3) Repatriation Act). The moment of deprivation of citizenship is a date in President's determination. Despite the fact that application for renunciation of Polish nationality does not deprive the candidate of citizenship and therefore the condition described in Article 44(1) u.a.b.w.a.w., it is very important in the process of verification though. Such declaration matters for the rest formal condition assessment, including those of subjective nature. By such declaration an individual reveals their attitude towards the country. It demonstrates a relaxation of the existing psychic bond between a person and a country and as such it needs to be assessed in the context of requirement of impeccable moral, citizenship and patriotic standing, adequate guarantees of confidentiality as stated in the Act on the Protection of Classified Information, physical and mental ability for the service in military organizations, which require particular work discipline, to which the person is ready to submit. It is worth noting that the Police Commissioner, the Chief of ABW and other competent authorities are obliged to pass relevant information to the President of Poland which may be connected to renunciation of citizenship procedure (Article 49(4) of the Act on Polish Citizenship). The information given can also explain the reasons or legitimacy of applications for renunciation of citizenship. So, *de lege ferenda*, should be called for an obligatory assessment of the information given by competent authorities on the candidates for the service, who became nationalized or applied for renunciation of citizenship. It is so important in the situation that the candidate applies for renunciation first and withdraw it after that. Such person will not lose the nationality then. As a consequence the subject of the application will not be assessed in the context of Article 44(1) u.a.b.w.a.w. Its scope is clear. It is having the citizenship or its lack. Therefore only declaration of renunciation of citizenship does not matter at all. For the assessment of other qualities it could be vital. That is why the verification should be made based on other requirements listed in Article 44 e.a.b.w.a.w.

As stated before, plural citizenship does not matter for the verification of condition in Article 44(1) u.a.b.w.a.w. It should be clarified though that it is true if a competent authority verifies only this condition. Plural citizenship or having foreign citizenship in the past may be relevant in assessment of other requirements for candidates for the service including in particular adequate guarantees of confidentiality assessment. This may be due to information on the person's behavior as a foreigner or due to the fact that it is not possible to verify information about the person. Protection of classified information has the priority over other legally protected interests. Therefore in case of any irresolvable doubts it is stated that the requirement of adequate guarantees of confidentiality is not fulfilled.

### **Full civil rights enjoyment**

Full civil rights enjoyment is another requirement for candidates for the service in ABW or AW. Despite this positive premise in Article 44(2) u.a.b.w.a.w. it is appropriate to characterize it through its lack. As the doctrine rightly highlights " access to

a public service is allowed not for all Polish citizens but those who enjoy full civil rights. Full civil rights enjoy those of age (with exceptions stated in law), those who have full capacity to act, those who were not deprived of public rights by the court of justice during criminal proceedings<sup>25</sup>. And therefore, the access to public service on equal terms have only those who fulfill basic criteria in individual services' pragmatics. Nevertheless, in all cases the basic requirement for candidates is Polish nationality and full civil rights enjoyment. *A contrario*, the access to ABW or AW or any other institution of military or paramilitary nature is excluded in case of full deprivation or limitation of rights. It is only an independent court of law competent in this respect. If we want to specify the meaning scope of the phrase "full civil rights" we should address Article 40 § 1 of the criminal code<sup>26</sup>. It concerns one of the punitive measures called "deprivation of public rights". According to Lech Gardocki<sup>27</sup> deprivation of public rights shall be related to two groups of rights. First one is linked to public activity and means the so called active and passive electoral law to public organs, the right to take part in the court of justice, the right to act in national and local authorities as well as professional self-governments.

Furthermore, punitive measure from the Article 40 § 1 of the penal code results in losing military rank and a return to the lowest rank, i.e. private. Second group embraces losing orders, awards and honorary degrees as well as losing the ability to be awarded during the period of time the punitive measure was imposed. However, this provision does not apply to loss of civil rights, which includes such notions as legal capacity, capacity to legal transactions or capacity to sue. Deprivation of public rights as a punitive measure may be issued only by a decision of the court as a sentence to penalty of confinement for at least 3 years for an offence which particularly merits condemnation. It must also be added that the risk of penalty for any offence in penal code does not even play key role. The determining criterion to decision on possible application of the punitive measure is penalty stated in the sentence. It is also important that this punitive measure may be issued optionally. It means that the court is not obliged to issue this punitive measure even if there are legal conditions to its application. A court judgment incorporating in its wording a punitive measure in a deprivation of public rights does not list individual public rights which a person is derived of. Their loss comes automatically with the issue of the measure. Deprivation of public rights is functionally linked to a custodial sentence for an offence. Article 44 u.a.b.w.a.w. admittedly is not a requirement for the candidate to the service in ABW or AW to lack of criminal record as stated in the provision of Article 25(1) of the Police Act<sup>28</sup> but in the face of conditions enabling deprivation of public rights, there must have been issued a sentence of imprisonment for at least 3 years regarding the person on whom the sentence has been imposed.

---

<sup>25</sup> T. Górczyńska, *Constitutional basis for public administration*, in: *Administrative Law System*, vol. 2, by R. Hauser, 1<sup>st</sup> edition, 2012, p. 444, Legalis.

<sup>26</sup> Criminal Code of 6 June 1997, Journal of Laws 2016 item 1137 as amended.

<sup>27</sup> L. Gardocki, *Criminal Law*, Warsaw 1999, p. 162 et seq.

<sup>28</sup> *The Police Act of 6 April 1990*, Journal of Laws 2016, item 1782 as amended.

Deprivation of some public rights may also result from other events, like for example renunciation of nationality. Some public rights are vested only in those who own Polish nationality. In case of lack of such feature further verification would not make sense. Lack of Polish nationality excludes a person from the circle of candidates to ABW or AW without the necessity of further checking.

Full civil rights notion is not the same as active exercising rights. The notion regards only to a possibility to exercise a right by an entitled person from the moment of acquisition of a right. In the sense of this provision “exercise” means legally safeguarded possibility to apply and use their vested interests. Full civil rights notion should be interpreted broader than it states in the Article 44(2) u.a.b.w.a.w. Right to use the public rights does not oblige to their real application. Full public rights exercises one who acquired them under the provisions in force and the possibility of their application is safeguarded by law. Acquisition of some concrete public rights may be associated with achieving a certain age by an adult. Thus, it should be pointed out that full public rights exercise both a person of age who had not gained powers to exercise all rights yet because of the lack of certain age (for example the age which entitles to use passive electoral right in President or Parliamentary elections) but has gained it progressively with age as well as a person who gained the proper age to fully exercise all the acquired rights.

To conclude, “full civil rights” notion may be addressed only to Polish nationals because only they are safeguarded the possibility to exercise full public rights by law. Renunciation of nationality leads directly to loss of some part of public rights. Secondly, a national must come of age in order to exercise these rights. The fact that some of them will be achieved in the latter period of life does not mind at all. Thirdly, a person cannot be deprived of them as a result of a decision of the court which limits or utterly derives of full public rights.

### **Impeccable moral, citizenship and patriotic standing**

Another requirement from Article 44(3) u.a.b.w.a.w is having such qualities that indicate impeccable moral, citizenship and patriotic standing<sup>29</sup>. It is a so called *general clause*, which means that it has no sharply defined boundaries. Legislator uses this term in the provision, showing no instruments for the entity verifying the qualities of the future officer to use, which could explain its meaning. However, it seems that the qualities should be verified not only with regard to the present but also to the past of the candidate. Assessing this requirement one should take under consideration

---

<sup>29</sup> It is worth mentioning that Article 25(1) of Police Act in its initial version had required impeccable moral, citizenship and patriotic standing from a candidate to the Police. It was changed towards blameless record requirement. Janusz Szpila points out that blameless record is a broader notion than impeccable moral, citizenship and patriotic standing, J. Szpila, *Central Anti-corruption Bureau officers' legal status*, St. Pr. PiPSp. z 2007, no. 1, p. 351 et seq.

elements that would be crucial for the future role of the officer within ABW or AW. An impeccable person is faultless, with irreproachable conduct, right, respectable, unblemished, crystal-clear. If one considers other notions connected to impeccable attitude as morally appropriate citizenship and patriotic standing, particular attention should be paid to such notions as respect for the law including respect for the norms of positive law, respect for social standards, customs or social relations settled in a certain community. A candidate's moral stance assessment is a sum of individual marks from his/her local environment, neighborhood or family. Respect for the law as well as for established local rules indicate the person's social role as a righteous, fine, noble and morally shaped person and citizen. Patriotism has to manifest as positive attitude towards the country, its legal system, its constitutional public organs, rights and freedoms (resulting from the Constitution), respect for national symbols, etc. It is not about demonstrating clearly belonging to a state by public participation in assemblies, manifestations or other patriotic meetings. A person does not have to belong to any organizations of such kind. It is sufficient that the person's attitude explicitly shows attachment, devotion, willingness to sacrifice and respect for all the issues connected to nationality. It is worth to recall a position of Stanisław Hoc and Przemysław Szustakiewicz on the interpretation of the notion *impeccable moral, citizenship and patriotic standing* in regard to formal requirements to the service in Central Anti-corruption Bureau (CBA). They list such characteristics as honesty, the way people behave towards other people, the way people behave in a workplace, respect for constitutional values, respect for tradition, willingness to sacrifice themselves for the good of Poland<sup>30</sup>. The characteristics as requirements for candidates to the service in CBA are in line with those for candidates to the service in ABW or AW.

A problem how to assess candidate's merits in this context in case of his involvement in any penal proceedings, especially if he plays a role of a suspect or a defendant, is a different matter and one worth thinking about. In case of offences prosecuted by the public prosecutor the *ad personam* stage of the proceeding must result in doubts on the candidate's ethical or moral assessment<sup>31</sup>. The same conclusion may not be drawn

---

<sup>30</sup> S. Hoc, P. Szustakiewicz, *Act on Central Anti-corruption Bureau Commentary*, state of law on 13 August 2012, LEX OMEGA – Article 48 remarks – though the remarks regard CBA pragmatics but it addresses the same requirements for candidates to ABW and AW.

<sup>31</sup> As jurisprudence raises informing the subject of the charges leveled against an officer (and a candidate – author) must resemble in the assessment of person from the perspective of having or lack of some characteristics, Judgment of the Supreme Administrative Court, 31 January 2012., I OSK 1206/11, LEX no. 1113237, Judgment of the Supreme Administrative Court, 4 November 2009, I OSK 334/09, LEX No. 586372, Judgment of the Regional Administrative Court in Warsaw, 21 July 2010, II SA/Wa 633/10, LEX no. 667345, Judgment of the Supreme Administrative Court, 10 March 2011, I OSK 1575/10, LEX no. 818489, Judgment of the Supreme Administrative Court, 1 March 2007, I OSK 788/06, LEX no. 362453, Judgment of the Regional Administrative Court in Warsaw, 21 May 2009, II SA/Wa 105/09, LEX no. 558701, Judgment of the Supreme Administrative Court, 12 October 2011., I OSK 474/11, LEX no. 1069661, Judgment of the Supreme Administrative Court, 4 August 2011, I OSK 327/11, LEX no. 1068504, Judgment of the Regional Administrative Court in Warsaw, 21 June 2011, II SA/Wa 757/11, LEX no. 1097167.

from the offence prosecuted on private accusation (if it was not embraced by the public claim as in Article 60§ 1 of the code of penal proceedings<sup>32</sup>) and in case of lodging subsidiary indictment act as in Article 55§ 1 of the code of penal proceedings. Private accusation is not preceded by preparatory proceedings, which results would be the basis for legal assessment of the occurrence involving a candidate for a service. Such assessment is a result of reflection of the harmed person including its personal attitude towards the perpetrator. The harmed person may not have an adequate legal knowledge to assess objectively the event that had taken place. In this case there is a likelihood that motives being a starting point for such a claim may be more of emotional nature rather than legal one in regard to legal assessment as well as to evidence. The same arguments regard a subsidiary indictment act. It is important that the case the indictments refers to had been a subject to a prosecutor's decision twice who spoke out negatively about the case issuing a decision on discontinuance of legal proceedings or confirming such decision. The remarks are important because a candidate's situation during penal proceedings against him/her has to reflect in their impeccable moral, citizenship and patriotic standing assessment. There is no doubt that the proper assessment of the evidence in proceedings either from indictment or private accusation which was embraced by a public action (as in Article 60§ 1 of the code of penal proceedings) must determine the assumption that a candidate is derived of qualities stated in u.a.b.w.a.w. Such conclusions cannot be taken *a limine* on the basis of private accusation, supported by private prosecutor only without any presence of public prosecutor or any subsidiary claim. The cases may only encourage a deep analysis by the entity verifying the future agent.

Assessing the qualities of the candidate it is worth to address a candidate's cases prosecuted as petty offences, especially those in which he/she acted as defendant. Quite importantly for impeccable moral, citizenship and patriotic standing assessment are other materials concerning criminal proceedings at preparatory proceedings or jurisdiction stage or cases prosecuted as petty offences (including materials from clarification proceedings) in which the candidate acted as witness or harmed person. A subject-matter of the case may not be as serious as the candidate's attitude towards the event. His attitude resembled in the evidence material may clearly show his impeccable moral, citizenship and patriotic standing (for example he helped the harmed person putting himself in jeopardy, counteracted or minimized the effects of events like emblems and other national symbols insults, State agencies' insults, democratic structure insults, etc. or, on the other hand, show lack of such qualities.

A service in military organizations is of specific nature. That is why the legislature decided to set higher standards for candidates. Therefore one cannot assume that lack of any negative information on the candidate can indicate his impeccable moral, citizenship and patriotic standing. Construction of the requirement confirms that the candidate must show this added value which distinguish him from other candidates. In any events verification of the qualities cannot be based on the candidate self-assessments.

---

<sup>32</sup> *Code of penal proceedings of 6 June 1997*, Journal of Laws 2016, item 1749 as amended.

The way information on the candidate necessary to assess him/her is obtained is also an important issue. A service pragmatics as well as administrative acts do not present all the possibilities leading to acquisition of the sufficient knowledge on the candidate. Some clues can be found in Article 46(1) u.a.b.w.a.w., in paragraph 4 of the Prime Ministerial Decree of 29 November 2002 on the outline questionnaire (Administrative Statement) and detailed rules and procedure for candidates to the service in ABW, in paragraph 4 of the Prime Minister Decree of 29 November 2002 on the outline questionnaire (Administrative Statement) and detailed rules and procedure for candidates to the service in AW which oblige the candidates to submit the Administrative Statement, the handwritten CV, any certificates of employment or service, any documents concerning acquired education, national personnel security questionnaire and other documents confirming professional skills and professional achievements of the candidate. The information will give some picture of the candidate, their private and professional life, their background and close family. The necessity of indicating persons who can give recommendations for the candidate is also a part of the overall picture; it gives some clues on the candidate's associates, trusted and close people. The information is reviewed, there is an interview with the candidate, the records are checked, there is an interview at the place of residence or work and opinions of the recommending people are taken into account (paragraph 5(1) of the Regulation of 29 November 2002 and paragraph 5(1) of the Regulation of 24 April 2003). The catalogue of the possible checks is not exhaustive. The information may come from internal sources (classified and unclassified data bases) as well as from external sources (recommendations). It is also acceptable to check the candidate in open sources, including information on the Internet. Legal and administrative acts are only a minimum. It seems that exhaustive enumeration of all sources on which the assessment of the candidate is made is unlikely and unreasonable.

### **Guarantees of confidentiality as stated in the Act on the Protection of Classified Information of 5 August 2010**

The proper characteristics of adequate guarantees of confidentiality as stated in the Act on the Protection of Classified Information of 5 August 2010 should be given by reference to notions and procedures stated in the Act of 5 August 2010 on the Protection of Classified Information<sup>33</sup>(u.o.i.n.). The Act does not contain a direct definition of "classified information", nevertheless it can be deducted from Article 1(1) u.o.i.n. It is every piece of information, in whatever form and way it is expressed, unauthorized disclosure<sup>34</sup> of which could cause prejudice to the interests of the Re-

---

<sup>33</sup> *The Act on the Protection of Classified Information of 5 August 2010*, Journal of Laws 2010, no. 182, item 1228 as amended.

<sup>34</sup> According to Stanisław Hoc, unauthorized disclosure of classified information is an action which results in access to the information by an unauthorized person, S. Hoc, *The Act on the Protection of Classified Information. Commentary*, Warsaw 2010, p. 73; idem, *Criminal law protection*

public of Poland or could be disadvantageous to such interests, also during its processing. A damage or threat of damage should be regarded as in Article 5 u.o.i.n. which addresses classification of classified information according to adequate classification ranks. The definition of classified information consists of legal rules from different legal provisions of the Act on the Protection of Classified Information, including Article 1 (1)(2) and Article 5 u.o.i.n. The right to get access to classified information has been described as “guarantee of confidentiality”. It shall be understood as the person’s ability to fulfill legal requirements of giving guarantees of confidentiality and securing classified information from unauthorized disclosure, stated as the result of a proper checking procedure (Article 2 (2) u.o.i.n.). The goal of the checking procedure is to establish whether a person gives guarantees of confidentiality (Article 24(1) u.o.i.n.). It is therefore necessary to check if there are any doubts towards a person being checked. To end the checking procedure the doubts need to be eliminated with a positive result for the person and the certificate is being issued. The scope of checking has been stated in Article 24(2.1-2.6) and Article 3(1) u.o.i.n. The procedure is to establish any doubts in the areas stated towards the checked person or to eliminate them. The legislator established the scope of checking in the negative terms. It means that there is a necessity of establishing the lack of guarantees of confidentiality in case of any doubts towards a person that cannot be removed and to acknowledge guarantees of confidentiality in case of a lack of doubts in areas listed in Article 24 (2)(3) u.o.i.n. The final result of the checking procedure does not constitute an arbitrary decision but it must be proceeded by an extensive analysis of information given and it must be properly justified by the person leading the procedure<sup>35</sup>.

There is no sense to elaborate any further the whole checking procedure towards a candidate for the service in ABW or in AW who is the person concerned in the checking procedure. This would exceed the scope of this elaboration. Nevertheless, it is interesting to know the scope of powers to interfere into rights and freedoms domain. The powers refer not only to checking people’s data from a personal information form in records, registers or data bases, including the National Record of Convictions, but they also refer to checking other data or information obtained during the checking procedure (Article 25(1.1) u.o.i.n.). Apart from that the powers refer also to checking in registers and data bases not publicly accessible people’s data from a personal information form or any other information obtained during the checking procedure to the extent necessary to prove that the person gives the guarantees of confidentiality

---

*of the information*, Opole 2009, p. 33; also I. Stankowska, *Commentary. The Act on the Protection of Classified Information*, Warsaw 2014, p. 15 et seq. This thesis is supported also by the judiciary – Judgment of the Supreme Court, 17 March 1971, III KR 260/70, New Law 1972, no. 7–8, p. 1260 et seq., OSNKW 1971, no. 10, item 151 with approving gloss of S. Hoc, New Law 1972, no. 7–8, p. 1262, Judgment of the Supreme Court of 8 March 2007, I KZP 30/06, OSNKW 2007, no. 4, item 32. “Entitled person” means a range of entities enlisted in Article 1(2) u.o.i.n., to which the Act applies. There are agencies of legal protection enlisted (Article 1(2.1.f)), among which is ABW and AW. Articles 1, 2, 5 and 6 show it by setting out their objectives and tasks.

<sup>35</sup> S. Hoc, *Protection of Classified Information...*, p.158.

(Article 25(1.2) u.o.i.n.). The extended procedure, apart from the actions stated in Article 25(1) u.o.i.n. may also embrace an interview with the candidate's former superiors or with other people, interview with people from the candidate's whereabouts, their bank account checking, any possible debts checking (Article 26(1) u.o.i.n.). There may an interview with a checked person take place if such necessity occurs (Article 25(5) u.o.i.n. and Article 26(4) u.o.i.n.), also in case of any inaccuracies or contradictions (Article 25(3) u.o.i.n.). If a person applies for the "top secret" certificate and it is necessary during the personnel security clearance procedure, interviews with 3 other persons designated by the person may take place (Article 26(5) u.o.i.n.). Such interference is justified by the security of such value as unclassified information. The legislator ensures its priority over other legally protected interests. One cannot forget that the checking procedure goes with the consent or on the initiative of the candidates for the service themselves. After all, they have the right to refuse passing the required information and taking part in required actions, but in this case they are aware of the possible negative decision which ends the whole interviewing procedure definitively with the negative result. Such behavior of the candidate may reveal lack of other qualities required for the service in ABW or AW, including lack of moral, citizenship and patriotic standing, lack of physical or psychical abilities for the service in military organizations which require a specific discipline. The Security Officer in ABW (§2(3) of the Regulation of 29. November 2002 ) and The Security Officer in AW (§2(3) of the Regulation of 24 April 2003) are entitled to pursue a checking procedure towards the candidates for the service in ABW and AW. It starts with passing the right Security Officer a completed personal information form, which had been given by the candidate while joining the interviewing process and it should be completed within 30 days either by issuing a security clearance, its refusal or discontinuance of the procedure (Article 28 u.o.i.n.). It is worth mentioning that only in case the security clearance is issued, one may state that a person gives guarantees of confidentiality. Other cases mean no guarantees of confidentiality. It stems directly from the wording of the security clearance certificate. According to Article 29(2.8) u.o.i.n. there should be a clear statement in the security clearance certificate that the checked person gives guarantees of confidentiality. According to Article 30(3.7) u.o.i.n. in case of refusal there should be a clear statement that the checked person does not give guarantees of confidentiality. In case of discontinuance of checking procedure, the lack of guarantees of confidentiality results directly from reasons, based on which the decision had been taken. The catalogue of such reasons has been placed in Article 31(1) u.o.i.n. As seen above, taking several actions within checking procedure to prove that the person gives guarantees of confidentiality is not enough. This situation must be reflected in the formal decision ending the procedure, i.e. security clearance certificate. It is only that document which entitles to access to classified information on the appropriate level. It also shows the concrete dates between which the person is entitled to access to classified information.

It is worth noting the autonomous character of the checking procedure from qualification process for the adequate service. Despite the fact that its result is relevant to the



qualification procedure it is still a separate procedure, carried out on the separate provisions (i.e. Act on the Protection of Classified Information), carried out by the separate entity (security officer) and its final result is a decision called “security clearance”. The entity carrying out a qualification procedure for the service in ABW or in AW cannot directly influence the content of the decision. The content of the decision itself giving or denying guarantees of confidentiality is essential for the ongoing qualification procedure because the decision denying access to classified information requires the completion of the procedure with a negative result (§ 3(2) and § 6(2) of the Regulation of 29 November 2002 and § 3(3) of the Regulation of 24 April 2003). In this sense the entity carrying out the qualification procedure while obtaining the security clearance or decision refusing to issue the security clearance or decision on discontinuance of legal proceedings, must acknowledge the fact that the candidate meets or not the requirement. The entity itself does not undertake its own arrangements contradictory to a decision taken in the course of the checking procedure.

**Secondary education and professional qualifications as well as physical and mental ability for service in military organizations, which require particular work discipline, to which the person is ready to submit.**

The last requirement listed in Article 44(5) u.a.b.w.a.w. is having at least secondary education and certain professional qualifications as well as physical and mental ability for service in military organizations, which require particular work discipline, to which the person is ready to submit.

As far as education is concerned it should be explained the term “secondary education” in accordance with the Act on Education System of 7 September 1991<sup>36</sup>. A secondary education has a person who is a secondary school graduate, except types of school listed in Article 11a (3) u.s.o. (vocational schools or other equivalent) or a person who is an upper secondary school graduate except the school listed in Article 9(1.3a) and Article 9(1.3e) u.s.o. (3-year-vocational school ending with a certificate/diploma confirming certain professional skills after passing special exams confirming certain qualifications for certain professions; it enables further education starting from the second year of high school for adults or 3-year-special school for mentally disabled pupils or for pupils with connected disabilities who can obtain work ability certificate. Upper secondary school embraces two types of schools: 3 year high school (Article 9(3b) u.s.o.) and 4 year technical school (Article 9(3c) u.s.o.)<sup>37</sup>.

---

<sup>36</sup> *The Act on Education System of 7 September 1991*, Journal of Laws 2004, no. 256, item 2572 as amended – (further: u.s.o.).

<sup>37</sup> Article 9(3) u.s.o. enlists five types of upper secondary schools, it puts them into a catalogue under the letters from a to e. Schools listed under a and e have been excluded by the Article 11a(4.2) u.s.o. Their graduates do not gain secondary education. The school listed in Article 9(3d) u.s.o. is aimed at persons who have already been granted secondary education. In this way graduation from upper secondary schools listed in Article 9 (3b) and (3c) u.s.o. results in gaining secondary education. Look at the *Regulation of the Minister of National Education of 15 October 2012 concerning creation, organization and activities of sports units, sports schools and schools of sports*

In the past the Act on Education System<sup>38</sup> used to be a system of primary and secondary schools. The catalogue of schools listed as the last, graduation from which entitled to secondary education has been given in Article 9(1.2) or Article 9(1.3) u.s.o. The next education reform introduced a new type of school – junior high. The Act which introduced junior high<sup>39</sup> modified the Article 9(1) u.s.o. by deleting the notion “secondary school”. At present a new education reform<sup>40</sup> is to delete junior high restoring previous model in which there were primary schools and secondary schools (Article 18(1) of the Education Law). The circle of people who obtain secondary education has been listed in Article 20(2) and Article 20(3) of the Education Law.

Graduation from the schools mentioned above, regardless of whether it was upper-secondary or secondary school, means secondary education. It is also irrelevant if a person attended the school on a daily bases or took a night school class exam pursuant to Article 10 u.s.o.<sup>41</sup> A service pragmatics does not require any specific school profile for the candidates provided that it provides secondary education after its graduating. A candidate can have secondary education either general or vocational<sup>42</sup>. Nevertheless, there is an obligation to possess certain vocational qualifications<sup>43</sup>. They may result

---

*championships* (Journal of Laws 2012, item.1129), the *Regulation of the Minister of Culture of 29 December 2004 concerning types of artistic schools, including public and non-public* (Journal of Laws 2005, no. 5 item 42 as amended), the *Regulation of the Minister of National Education of 15 February 1999 concerning types of public and non-public artistic schools, their operational rules, the way and the term of introducing new types of artistic schools and transformation existing school into new ones and their existence within educational system* (Journal of Laws 1999, no. 14, item 125 as amended), the *Regulation of the Minister of National Education of 29 July 1998 concerning technical high school* (Journal of Laws 1998, no. 102, item 648) concerning types of schools which graduates gain secondary education.

<sup>38</sup> *The Act on Education System of 7 September 1991*, Journal of Laws 1991, no. 95, item 425 as amended.

<sup>39</sup> *The Act Amending the Act on Education System of 25 July 1998*, Journal of Law 1998, no. 117, item 759.

<sup>40</sup> *The Act on Education System of 14 December 2016* (Journal of Law 2017, item 59) – the act should enter into force on 1 September 2017.

<sup>41</sup> It should be added that night school class exam enables gaining secondary education on the general level only. Gaining proper qualifications requires two-stage activity, i.e. gaining general secondary education and then taking the exam equivalency which enables to obtain proper professional qualifications. This issue extends beyond this text framework therefore other remaining questions shall be left out.

<sup>42</sup> Having secondary education is not the same as having the High School Diploma. According to § 53(1) of the Minister of National Education *Regulation of 30 April 2007 on the conditions and ways of assessing, classification and promotion of pupils or learners and conducting tests and exams in public schools* (Journal of Laws 2007, no. 83, item 562 as amended) the High School Diploma is a form of general education assessment which tests knowledge and skills. A person entitled to take this exam is a graduate only, i.e. a person who graduated a secondary or an upper secondary school. The exam does not confirm the completion of the school on a certain level. It is a diploma/certificate which confirms the completion of the particular type of school. A passed examination entitles to be given the High School Diploma and enables to apply to a college or university.

<sup>43</sup> Article 3 u.s.o. defines the concepts of qualifications for a profession (point 19) and qualification professional course (point 20). Qualifications for a profession means a separate set of expected

from graduating a proper type of school but not necessarily. The qualifications may be a result of certain professional courses, vocational educational training, professional background and experience or other type of skills, etc. In Article 44(5) u.a.b.w.a.w. there is a conjunction “and” which clearly indicates that the requirement is fulfilled if the candidate has cumulatively two attributes, i.e. at least secondary education and proper professional qualifications. It is important to reference these qualifications to the scope of tasks of the future officer. Neither u.a.b.w.a.w. nor implementing acts give direction on the areas required from the candidate (professional background or type of required skills) which are necessary or desirable to serve in ABW or AW. There is no doubt that the qualifications should be established individually and adjusted to a planned working post because it connects directly with a job description. It shows Article 46(2) u.a.b.w.a.w. which enables to extend the qualification procedure for the service to check whether the candidate is suitable for a certain position if certain skills are required, including psycho and physiological test<sup>44</sup>. The secondary or upper secondary school certificate confirms education on an appropriate level. If a person has a higher education after graduation their first or second circle or master’s degree, post-graduate studies, he/she is obliged to submit the proper certificates/diplomas without other documents confirming education on a lower level. The same situation applies to education abroad. In such cases the candidate has to submit a certificate/diploma equivalent to Polish certificate/diploma together with an administrative decision on its recognition unless it does not require recognition. Such document should be, as it seems, submitted together with its translation into Polish by a sworn translator, unless it has been written in Polish<sup>45</sup>. The same arguments shall be related to all certifications, certificates, diplomas and any other documents confirming certain skills, qualifications, courses, professional or scientific experience, etc. While ending the consideration on the education and candidate’s qualifications, it is also worth mentioning one more thing. Article 46(1.1) u.a.b.w.a.w. points out that one of the elements of the qualification procedure is the transfer of documents concerning education and professional qualifications and § 4(4) and § 4(6) of the Regulation of 29 November 2002 and § 4(1.4) and (1.7) of the Regulation of 24 April 2003 oblige the candidate for the service to submit to the HR unit proper documents confirming education and professional qualifications and any other documents confirming skills and professional achievements. None of these

---

education outcomes, confirmed by the certificate/diploma issued by the regional examination body, after the examination confirming professional qualifications is passed. Qualification professional course means a course which complies with a learning programme base in professions in respect of one qualification and completion of which enables to take the exam confirming qualification in the occupation with regard to this particular/one qualification.

<sup>44</sup> Compare with § 5(1.6a) of the Regulation of 29 November 2002 and § 7(1) of the Regulation of 24 April 2003 which allow psychophysiological, psychotechnical or other tests in order to check particular skills of the candidate.

<sup>45</sup> Article 93 et seq. u.s.o. sets all the issues concerning certificate equivalence and rules of their recognition. However, the subject extends the framework of this elaboration. The subject of legalization and recognition procedures of the foreign certificates (apostille) have been omitted.

legal acts does not specify whether the submitted documents should be in the original, or the original should be submitted for consultation only and for the purpose of the procedure a copy would be sufficient, or the copy should be attested. Because of lack of sufficient regulation in this matter, it should be up to the entity leading the qualification procedure or it can be regulated by internal provisions.

In Article 44(5) u.a.b.w.a.w. there is a requirement of physical and mental ability for the service in military organizations, which require particular work discipline, to which the person is ready to submit. The employment in military or paramilitary organizations, whatever they may be called and whatever their tasks are, is a particular type of service. It is a subject of restrictions. Working relationship which constitutes the legal bond and the scope of rights and obligations between a person and the organization, according to the judiciary<sup>46</sup> is based on a particular discipline, to which the person is ready to submit. It is services' pragmatics and other implementing acts that limit this availability. Therefore the candidate has to have physical and mental abilities to submit the obligations of this specific working relationship. This subject is so important that discipline and availability must be based on the officer's free will. It is up to the unit verifying the candidate's predisposition whether the statement of the will to join the service is fully understandable not only in the formal context but also in terms of its consequences, including its restrictions in the field of rights and freedoms.

This requirement as well as impeccable moral, citizenship and patriotic standing displays the characteristic of general clause, which mean that it does not possess clear meaning lines. Nevertheless, it is the interview, psychological and psycho-technical evaluations, skill and qualification assessments, physical fitness examination, medical assessments by special medical committees in ABW or AW that cancelled its subjective character.

Activities and examinations mentioned above have been described as stages of the qualification procedure. The whole procedure is described in the Regulation of 29 November 2002 on the qualification procedure for candidates to ABW and the Regulation of 24 April 2003 on the qualification procedure to AW. The two Regulations are implementing acts to Article 46(3) u.a.b.w.a.w. The interview is to establish suitability for the service in ABW or AW and the motivation. Psychological examination ends with psychological opinion on the mental ability for the service in ABW or AW. Physical fitness examination is to confirm physical abilities. Psycho-technical evaluations, skill and qualification assessments are to prove special abilities of the candidate for the post within a service which requires such skills or predisposition. Furthermore, candidates undergo medical examination which results in the medical committee (subordinate to the Head of ABW or AW) positive or negative decision on the health ability for the service (Article 45(1) u.a.b.w.a.w.). In this aspect the medical stage of procedure is separate and its result influences the whole qualification procedure. There is an analogy to a vetting procedure. A valid medical committee decision cannot be changed during the latter stages of the pro-

---

<sup>46</sup> Judgment of the Regional Administrative Court in Warsaw, 13 February 2007, II SA/Wa 2239/06, LEX no. 318269.

cedure, especially by the entity in charge of proceedings. The important fact is that it determines further stages of this procedure<sup>47</sup>. Medical committee decision on the inability for the service makes it necessary to drop the qualification procedure in case of the service in AW (§ 6(2) of the Regulation of 29 November 2002) or it may cause the necessity of dropping the procedure in case of AW (§ 8 of the Regulation of 24 April 2003). According to Article 45(2) u.a.b.w.a.w. the rules of physical and psychic abilities for the service in ABW and AW are regulated by the Regulation of the Prime Minister of 15 April 2003 on the assessment of physical and psychic abilities for the service in ABW<sup>48</sup> and the Regulation of the Prime Minister of 23 October 2003 on the assessment of physical and psychic abilities for the service in AW<sup>49</sup>. Detailed procedure before medical committees goes far beyond the scope of this article. Nevertheless, it is worth giving some specific characteristics of the procedure showing its independence of the qualification procedure. Referral to the regional medical committee takes place *ex officio* (§ 6(2.1) of the Regulation of 15 April 2003 and § 6(2.1) of the Regulation of 23 October 2003) which means that the qualification procedure cannot be pursued without this procedure and the entity proceeding the qualification procedure cannot undertake autonomous activities in the area which would replace medical committee decision. Referral to the medical committee is followed by a psychological assessment and physical fitness examination result (§ 8 (1) of the Regulation of 15 April 2003) or psychological assessment and information on the kind of service the candidate serves, in case the candidate is an officer of any other service (§ 8(2) of the Regulation of 23 October 2003) and guidance on the further designation within the service (§ 8(1) of the regulation of 23 October 2003). It means that the referral to the medical committee cannot proceed psychological assessment and physical fitness examination. Medical committee decision shows the candidate's ability by their classification to one out of two health categories stated in § 10 and § 11 of the Regulation of 15 April 2003 or § 10 and § 11 of the Regulation of 23 October 2003. Medical committee decision lacking force of law issued by a regional medical committee may be appealed against through the Central Medical Committee (§ 20 et seq. of the Regulation of 15 April 2003 and § 20 et seq. of the Regulation of 23 October 2003). Specific criteria of the health assessment minimize probability of extreme subjectivity by assessing the health of candidates by the members of medical commissions. Furthermore, the right to appeal against medical committee decision lacking force of law enables to control a content of the decision. It supports the notion that despite the fact that Article 44(5) u.a.b.w.a.w. displays the characteristics of a general clause, its subjective nature shall be revised by a wide range of tests, checks, examinations and medical assessment which are regulated according to law.

---

<sup>47</sup> Medical committee decisions are not limited only to the assessment of the candidate's health but they also resolve in an authoritarian way the issue of the ability of candidates for the service by allocating the examined person to one of the categories indicating ability for the service (Judgment of the Supreme Administrative Court of 28 June 2011, OSK 166/11, Lex 1082668).

<sup>48</sup> The *Regulation of the Prime Minister of 15 April 2003 on the assessment of physical and psychic abilities for the service in ABW*, Journal of Laws 2014, item 242 as amended.

<sup>49</sup> The *Regulation of the Prime Minister of 23 October 2003 on the assessment of physical and psychic abilities for the service in AW*, Journal of Laws 2003, no. 187, item 1824 as amended.

## Conclusion

It is not possible to refer comprehensively to all aspects of the subject of requirements for candidates to the service in ABW or AW. It would require a much wider study. Each and every requirement from Article 44 (1-5) u.a.b.w.a.w. could be a subject of a separate study. The main goal of this article is to indicate the most important issues in the subject. A very important characteristic of the requirements for candidates is the fact that they do not constitute the working relationship in themselves. In other words they do not fall within the scope of the notion “a working relationship”. Nevertheless, they influence it substantially. Firstly, they initiate it. If a candidate meets all the legal requirements, verified during the qualification procedure, the working relationship can be established by the competent entity. Next, they allow continuation of the working relationship as long as the officer meets the requirements. This way they guarantee an officer a job as long as he/she meets the requirements. On the other hand, they oblige to end the working relationship as the officer does not meet any of the requirements.

## Abstract

The main research aim of this article was to introduce problems concerning formal conditions enabling the establishment of service relationship with functionary of the Internal Security Agency and the Intelligence Agency. All conditions that cause ability to establish relationship between candidate and above formations are listed in the text of Article 44 of the Act of the Internal Security Agency and the Intelligence Agency. They are included in 5 points of this regulation. They are presented and discussed in the individual parts of this article. Before establishing ties between sides of service relationship, a candidate must attend qualification procedure. Candidate for service has to possess all requirements like being a Polish citizen, having full civil rights, having impeccable moral patriotic and civic attitude, having at least secondary education and appropriate professional qualifications and being in a good physical and mental condition to serve in the armed forces subjected to a special service discipline which he/she is ready to obey and he/she must guarantee keeping safe undisclosed information. Moreover, a candidate has to possess them at the time of attending qualification procedure. Next, he/she has to submit all required documents and attend various tests and exams. When he passes all of them positively, they can be accepted for service. It is very important to say that this requirements do not form the structure of the service relationship, but they have a major impact on it. They not only allow it to initiate, but even determine its existence.

**Keywords:** circumstances for service, candidate for service, employment, qualification procedure, service.