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**Mirosław Karpiuk, *Służba funkcjonariuszy
Służby Kontrwywiadu Wojskowego*¹
i Służby Wywiadu Wojskowego² oraz żołnierzy zawodowych
wyznaczonych na stanowiska służbowe w tych formacjach³**

We should point out in the beginning that despite some theoretical and practical work on the employment of military servicemen and professional soldiers⁴, the subject is still of not much interest of the administrative law doctrine. It is understandable insofar as the subject is often interpreted as a part of the labour law, which was transferred to the area of the administrative law because of – unjustified, historical tradition. It should also be noted that over the last few years, there is a tendency of “withdrawing” legal regulations concerning the functionaries’ money endowments out of the administrative courts supervision and transferring this issue to the common courts, i.e. labour courts. We can observe this in the Act of 9 April 2010 on the Prison Service⁵ and the Act of 16 November 2016 on the National Revenue Administration.⁶ This is the reason why in the course of work dedicated to military services the issue of employment there comes up somewhat incidentally to show the specific tasks of the described units.⁷ It should also be added that there is a problem in Poland with the definition of the term ‘military service’.⁸ There is the question whether it is the organization, requiring its workers to wear a special uniform, like - for example, in the Municipal Guards. In such a case the Central Anti-Corruption Bureau would not fall into the category because its functionaries are not obliged to wear uniforms. But the Forest Guards would. Or is this is the kind of organization, in which the legal relation between the functionary and the service is of a special administrative nature. In this meaning the City Guard is not a military service.⁹ No wonder that the number of paper works on the employment of military services functionaries and professional workers is rather small. In this

¹ Further: SKW.

² Further: SWW.

³ Olsztyn 2017, Uniwersytet Warmińsko-Mazurski, p. 226.

⁴ Cf. T. Zieliński, *Stosunek prawa pracy do prawa administracyjnego*, Warsaw 1977; *System prawa administracyjnego*, Vol. 11: T. Kuczyński, E. Mazurek-Jasińska, J. Stelina, *Stosunek służbowy*, Warszawa 2011; M. Liwo, *Status służb mundurowych i funkcjonariuszy w nich zatrudnionych*, Warszawa 2013.

⁵ Journal of Laws 2017, item 631.

⁶ Journal of Laws 2016, item 1947 as amended.

⁷ Cf. M. Liwo, *Status służb mundurowych i funkcjonariuszy w nich zatrudnionych*, Warszawa 2013 and M. Bożek, *Służby specjalne w strukturze władz publicznych*, Warszawa 2014 – its review was published in „Przegląd Prawa Publicznego” 2015, No. 12, pp. 235–239.

⁸ Cf. M. Liwo, *Służby mundurowe jako kategoria języka prawniczego*, „Przegląd Prawa Publicznego” 2015, No. 2.

⁹ Cf. NSA decision of 7 V 2015, OSK 1118/15.

context, the book by Mirosław Karpiuk *Śłużba funkcjonariuszy Służby Kontrwywiadu Wojskowego i Służby Wywiadu Wojskowego oraz żołnierzy zawodowych wyznaczonych na stanowiska służbowe w tych formacjach* should be treated with great interest.

The work by M. Karpiuk is the first so comprehensive reference to the type of employment in SKW and SWW. Based on the literature the author presents in a complex way the stages in the service: 1) screening procedure, 2) types of service, 3) discharge procedure and elements that shape the content of the employment bond, including most of all the subject of emolument and the right for accommodation. It should be added that the topic of a legal bond between the functionary and the service is rather complicated. The nature of this bond is regulated by the following 4 legal acts:

- *The Act of 9 June 2006 on the Military Counterintelligence Service and the Military Intelligence Service*,¹⁰
- *The Act of 9 June 2006 on the service in the Military Counterintelligence Service and the Military Intelligence Service*,¹¹
- *The Act of 1 September 2003 on the military service of professional soldiers*,¹²
- *The Act of 22 June 1995 on the accommodation in the Armed Forces of the Republic of Poland*.¹³

Those legal acts, as well as other regulations describe the rights and obligations of functionaries and professional soldiers serving in SKW and SWW. We must also point out that there is a lack of proper professional literature on this topic and case-laws are rather scarce. The work by M. Karpiuk taking up the difficult task to describe the topic holistically is therefore a precious one. The author points out that in both services there are two categories of employees, i.e. functionaries and professional soldiers. Their legal status is slightly different because the provisions of the act on SKW and SWW are applicable for the first group and the provisions of the act on the military service of professional soldiers are applicable for the second.

The publication consist of eight chapters, an interesting introduction, a summary and the reference list.

Chapter I, entitled *Śłużba Kontrwywiadu Wojskowego oraz Śłużba Wywiadu Wojskowego – zagadnienia ogólne* is very interesting as it is a kind of introduction in the topic itself. The author presented the tasks and the goals of the described services which helps to understand why the people service in SKW and SWW have that particular status. There is no way not to agree with M. Karpiuk that military special services as a part of Armed Forces of the Republic of Poland are one of the most important element of the state security, which determines the way the legal bond of serving there functionaries is created. The tasks of those two services causes that the rights and obligations of functionaries and professional soldiers are subordinated

¹⁰ Journal of Laws 2017, item 1978.

¹¹ Journal of Laws 2017, item 861, as amended.

¹² Journal of Laws 2016, item 1726, as amended.

¹³ Journal of Laws 2016, item 207, as amended.

to the higher goal of SKW and SWW, which is the efficient completion of their goals because the future of the Polish state depends on that.

In the next chapters (II-VII) the elements of the employment of functionaries and professional soldiers were described in an interesting way. Chapter II and III describe the screening procedure in the military intelligence services. The author noted quite rightly that there are two screening procedures in SKW and SWW: 1) the transfer of professional soldiers from the army units and 2) employment from outside – in a long lasting qualification procedure. It seems unnecessary that the part dedicated to professional soldiers contained deliberations on the right performing the duties and on the justifying the absence in the service. It would be better if the topic was described in Chapter V dedicated to the rights and obligations of the serving in military special services taking into account similar regulations in civilian special services and quite reach courts' judicial decisions on that. In the next chapters (IV-VII) the individual elements of the legal bond of functionaries and professional soldiers in SWK and SWW were discussed. The Chapter V mentioned above contributes much to the topic. M. Karpiuk described there in details an interesting but rather unknown subject of the health and safety provisions in the services. It is rarely a subject of scientific reflections¹⁴, although it can have a great practical meaning. It refers particularly to the courts' assessments of disciplinary decisions or decisions on the discharge because the non-compliance with the health and safety provisions by the state institutions can lead to the poor performance of tasks by functionaries, which, further, can be a basis for disciplinary decision or a decision on the discharge. The author pointed out aptly the important elements of the subject.

Chapter VIII entitled *Odpowiedzialność dyscyplinarna funkcjonariuszy Służby Kontrwywiadu Wojskowego oraz Służby Wywiadu Wojskowego* seems very interesting. The author describes and comments on the disciplinary proceeding and the defense measures the functionaries have at their disposal. The particular role of a disciplinary advocate was pointed out here, whose acts guarantee the right conduct of the procedure. Lack of a deepened reflection on the premises of disciplinary responsibility is a bit unsatisfying. M. Karpiuk lists them only, although it would be worth discuss the subject in more details.

The reviewed book deserves the attention of any who is interested in the topic of employment of functionaries in military services. It is one of the few works with no practical nature, in which the author presents in an interesting way the complicated legal aspects of the legal status of people serving in SKW and SWW.

¹⁴ More on the topic in: M. Liwo, *Status służb mundurowych i funkcjonariuszy w nich zatrudnionych*, Warsaw 2013, pp. 329–396.