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ADMINISTRATIVE SEIZURE OF FIREARMS. LEGISLATIVE POLICY OF THE STATE IN RELATION TO CITIZENS LEGALLY POSSESSING FIREARMS

ADMINISTRACYJNE ODEBRANIE BRONI. LEGISLACYJNA POLITYKA PAŃSTWA WOBEC OBYWATELI LEGALNIE POSIADAJĄCYCH BROŃ

Summary: The article concerns the issue of administrative seizure of firearms. This questionable issue was regulated in art. 19 of the Act on arms and ammunition. The article contains numerous references to the jurisprudence of the Supreme Administrative Court and the Provincial Administrative Court. The author presented the right legal solutions to this issue and presented discussion regulations and questions. The author ends polemical issues with *de lege ferenda* conclusions.

Keywords: firearms, police, administrative bodies, firearms license, seizure of firearms, administrative proceedings, administrative court.

Streszczenie: Artykuł dotyczy kwestii administracyjnego odebrania broni palnej. Ta dyskusyjna kwestia została uregulowana w art. 19 ustawy o broni i amunicji. Artykuł zawiera liczne odniesienia do orzecznictwa Naczelnego Sądu Administracyjnego oraz Wojewódzkiego Sądu Administracyjnego. Autor przedstawia słuszne rozwiązania prawne w tej materii oraz prezentuje regulacje dyskusyjne i budzące wątpliwości. Kwestie polemiczne autor kończy wnioskami *de lege ferenda*.

Słowa kluczowe: broń, Policja, organy administracji, pozwolenie na broń, odebranie broni, postępowanie administracyjne, sąd administracyjny

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It has been known for a long time that the military strength of the state is evidenced not only by well technically-equipped and highly-trained professional army, but also by civilian citizens possessing at least a basic level of shooting training and weapons through which they pursue their passions on many levels: sports, hunting, collectors, training etc.¹ Developed as part of the current state policy of the Territorial Defense Army, although in the strict sense they enter the structure of the army, they draw their roots from civil potential, highly valuing people with skills and training². There is no doubt that the possession of firearms in the civilian hands of the citizens constitutes the military potential of the state and is part of the strategy to deter a potential aggressor. This perspective, however, does not exclude or prevail in any way the internal security policy of the state implemented through the administrative control of civilians possessing firearms. One of the many measures of this control adopted by the legislator in the Act on firearms and ammunition of 21.05.1999, Journal of Laws 2019.284 (hereinafter UoBiA) is the institution of the administrative seizure of firearms, regulated in art. 19 of the same Act.

It should be emphasized that the seizure of firearms provided for in art. 19 UoBiA is a slightly milder in effect institution than the administrative seizure of firearms license, regulated in art. 18 UoBiA³. Although actually the effect is the same – deprivation of access to firearms, it does not carry as far-reaching legal consequences as seizure of firearms license. In addition, the effect of applying this regulation may be reversible in the form of restoring the owner of the actual (physical) possession of the firearms⁴. It should be noted that the seizure of firearms deprives the owner of its actual possession, while leaving him with the right in the form of firearms license. Despite the milder consequences mentioned above, which are caused by art. 19 UoBiA in comparison with art. 18 UoBiA, the resulting administrative measures should not be treated only as alternative activities. In many factual situations, it has a sequential dimension, where the seizure of firearms is a stage to deprive the firearms license and has only an administrative and orderly dimension.

¹ See B. Saramak, „Powszechny dostęp”, którego nie było. O mitach wokół posiadania broni palnej, <https://klubjagiellonski.pl/2017/11/16/powszechny-dostep-ktorego-nie-bylo-o-mitach-wokol-posiadania-broni-palnej/> [access: 28.10.2019]; M. Drewniak, *Wpływ broni palnej na bezpieczeństwo państwa i obywateli*, <http://www.nowastrategia.org.pl/wpływ-broni-palnej-na-bezpieczenstwo-panstwa-i-obywateli/> [access: 28.10.2019]; A. Bartkiewicz, *Czy dać Polakom broń?*, <https://www.rp.pl/Plus-Minus/303049970-Czy-dac-Polakom-bron.html> [access: 28.10.2019].

² See Territorial Defense Army, *Jak krok po kroku zostać Terytorialsem*, <https://terytorialsi.wp.mil.pl/jak-zostac-terytorialsem> [access: 28.10.2019].

³ Further on this topic: B. Nowakowski, *Administracyjne cofnięcie pozwolenia na broń. Polemika na kanwie przypadków regulowanych art. 18 ustawy o broni i amunicji*, „Journals of Law and Administration” 2019, Zeszyt specjalny, p. 23-43.

⁴ Cf. J. Majo, *Cofnięcie pozwolenia na broń a odebranie broni*, *Strzał*.pl 10/2018, p. 77.

ADMINISTRATIVE AND SUBJECTIVE PREMISES

In the context of the issue raised, it should be noted that the seizure of firearms applies only to persons legally possessing them. As a rule, it will be seizing the firearms as a result of its handing or search (rooms, people). Securing firearms from persons who possess them illegally occurs on the principles set out in the provisions of criminal law⁵ and does not fall within the scope of the issue discussed here.

The right resulting from the analyzed provision is not granted to the police authority competent to issue firearms licenses, i.e. to the Provincial Police Commander but to the Police. The same is true for professional soldiers. The competent authority is not the Commander of the Military Gendarmerie Department, but the Military Gendarmerie. The above position was emphasized, among others in the judgment of the Supreme Administrative Court of 18/06/2019⁶. In practice, the activities based on art. 19 UoBiA are undertaken by local Police headquarters, less often Provincial Police headquarters⁷. Therefore, every policeman, officer of the Military Gendarmerie and Border Guard has the right to preventively secure firearms. However, officers of other services are not entitled to this right, e.g. Internal Security Agency (ABW), Central Anti-Corruption Bureau (CBA), Military Counterintelligence Service (SKW). These officers act to protect public safety and order, including ensuring peace in public places and in means of public transport, in road traffic and in waters intended for general use (Article 1 (2) point 2 the Police Act). Therefore, within the limits of their tasks and in order to recognize, prevent and detect crimes and offenses, the Police perform administrative and order operations, reconnaissance and investigation activities (Article 14 (1) Police Act (UoP)). Performing them the Police have the right to search people and rooms in the mode and cases specified in the provisions of the Code of Criminal Procedure and other acts (Article 15 (1) (4) of the Act). An important point is that a service card is enough for security and no court orders or administrative decisions are needed. After performing the action no official approval is necessary⁸. The assessment of whether there is a factual situation and a state of emergency is a subjective issue of an officer based on objective circumstances. It should be remembered however, that this assessment cannot be arbitrary.

⁵ Cf. S. Maj, *Ustawa o broni i amunicji. Komentarz*, LEX No. 587551762, art. 19.

⁶ Compare Judgement of Supreme Administrative Court of 18.06.2019, II OSK 2047/17, LEX 2702224.

⁷ Cf. A. Turczyn, *Odebranie broni w trybie art. 19 ust. 1a ustawy o broni i amunicji*, <https://trybun.org.pl/2016/06/02/odebranie-broni/> [access: 28.10.2019].

⁸ Cf. S. Maj, *Ustawa o broni i amunicji...*, art. 19; A. Turczyn, *Odebranie broni w trybie art. 19 ust. 1a...*; judgment of Provincial Administrative Court in Poznań, IV SA/Po 580/16, LEX No. 2331339.

LEGAL GROUNDS FOR THE SEIZURE OF FIREARMS

Art. 19(1) UoBiA

First (art. 19(1)(1) UoBiA)⁹, the authority seizes firearms and ammunition together with documents confirming the legality of possession, when the circumstances referred to in art. 18 (1)(1-2 and 4 and 5) UoBiA, in the field of firearms. Thus, the legislator refers to the provisions that constitute the basis for the more restrictive action of the authority, namely the withdrawal of the license as already highlighted at the outset.

Art. 18 sec. 1(1-2 and 4 and 5) UoBiA lists both mandatory and optional conditions constituting the basis for withdrawal a firearms license. It should be emphasized, however, that when the legislator refers to them by regulating the issue of the seizure of firearms, in that case, he diverges from their division into obligatory and optional, which in consequence means that he does not distinguish between situations in which the authority must and in which it may seize the firearms. In art. 19 (1) UoBiA it has been explicitly stated that the Police or Military Gendarmerie can seize firearms, so they are not obliged but only authorized to do so. In other words, also those situations, which had the necessary effect of withdrawing the firearms license, in terms of the seizure of firearms carry only optional consequences.

Therefore, when applying the content of the provisions cited to the issue of seizure of firearms, it must be said that it may occur when the owner of the weapon does not comply with the conditions specified in the firearms license, regarding the limitation or exclusion of the possibility of carrying it¹⁰. Secondly, the weapon may be taken from a person with mental disorders¹¹ or with significantly reduced psychophysical condition (Article 15 (1) (2) UoBiA); addicted to alcohol or psychoactive substances (Article 15 (1) (4) UoBiA); not having a permanent residence in the territory of the Republic of Poland (Article 15 (1) (5) UoBiA); finally, one for which there is a reasonable fear that he may use a weapon for purposes contrary to the interests of security or public order, in particular convicted by a final court decision for a crime against life, health or property or against which criminal proceedings are pending for committing

⁹ The article omitted article 19 (1) (2) UoBiA referring to registered pneumatic weapons, as the author's considerations a priori were narrowed down to the firearms catalog.

¹⁰ Cf. S. Maj, *Ustawa o broni i amunicji...*, art. 18. In addition, in the context of the discussed issue, it should be emphasized that the legislator by carrying a weapon understands every way of moving a weapon by a person who has a license for this weapon (Article 10 (4a) UoBiA).

¹¹ The Act of 19.08.1994 on the protection of mental health (Article 3 (1), Journal of Laws of 2018, item 1878) by a person with mental disorder understands: mentally ill (showing psychotic disorders), mentally handicapped, showing other disturbances in mental functions, which according to the state of medical knowledge are classified as mental disorders, and the person requires health services or other forms of help and care necessary to live in a family or social environment.

such crimes (Article 15 (1) (6) UoBiA)¹². The weapon may also be taken from a person who travels with a discharged weapon or carries a weapon in a state after using alcohol, a narcotic drug or psychotropic substance or a substitute (Article 18 (4) UoBiA).

The circumstances justifying the seizure of firearms are then a violation of the provisions on the obligation to register the weapon (within 5 days of its acquisition¹³); failure to undergo the required periodic examinations prescribed for weapon license holders¹⁴; not informing about a change of permanent residence (in the event of a change of permanent residence, you must notify the Police authority competent for the new permanent residence in writing within 14 days from the date of change of permanent residence¹⁵); violation of the rules on the storage and carrying of weapons (which should be stored and carried in a way that prevents access by unauthorized persons)¹⁶; arms exports abroad without obtaining prior consent (arms and ammunition exports abroad by Polish citizens require the consent of the competent Police authority; this obligation does not apply in the case of issuing a European Weapon Card authorizing the entry of weapons into the territory of the Member States of the European Union)¹⁷; use of weapons for training or sporting purposes outside the firing range¹⁸; or lending it to an unauthorized person¹⁹. In addition, the Act also includes in this catalog the cessation of factual circumstances which constituted the basis for issuing the license²⁰.

¹² Further in this topic cf. B. Nowakowski, *Administracyjne cofnięcie pozwolenia na broń...*, op. cit., p. 30-32; K. Chałupka, *Pozwolenie na posiadanie broni palnej – uwagi de lege lata i de lege ferenda*, LEX No. 151209032; A. Herzog, *Ustawa o broni i amunicji po nowelizacji*, „Prokuratura i Prawo” 2011, No. 10, p. 70; P. Chochorowska, *Związanie organu administracji orzeczeniem sądu karnego*, LEX No. 151175894; B. Kurzępa, *Glosa do wyroku WSA z dnia 14 grudnia 2011 r.*, II SA/Wa 2098/11, LEX No. 386044435; B. Kurzępa, *Postępowanie administracyjne – cofnięcie pozwolenia na broń – przesłanki. Glosa do wyroku WSA z dnia 9 stycznia 2012 r.*, II SA/Wa 2281/11, LEX No. 386032019; R. Rejmaniak, *Glosa do wyroku Naczelnego Sądu Administracyjnego w Warszawie z dnia 20 lutego 2015 r.*, sygn. II OSK 1683/13, „Prokuratura i Prawo” 2016, No. 9, p. 187-197.

¹³ Art. 13 UoBiA.

¹⁴ Medical and psychological reports issued by authorized physicians and psychologists state that a person does not belong to persons: with mental disorders or with severely limited psychophysical condition; showing significant disturbances in psychological functioning: addicted to alcohol or psychoactive substances, and confirm that he may have a weapon; they are presented by people who apply for a gun permit or register pneumatic weapons; a person who has a license for a weapon issued for the purpose of personal protection or the safety of others and property is obliged to submit authority current medical and psychological reports to the competent Police once every five years; the competent Police authority may oblige that person to undergo immediate medical and psychological examinations and present issued judgments – cf. S. Maj, *Act on Weapons and Ammunition...*, op. cit., Art. 19.b

¹⁵ Cf. art. 26 UoBiA.

¹⁶ Cf. art. 32 UoBiA.

¹⁷ Cf. art. 38 UoBiA.

¹⁸ Cf. art. 45 UoBiA.

¹⁹ Cf. art. 28 UoBiA.

²⁰ Cf. art. 18 (4-5) UoBiA.

Art. 19, (1a) UoBiA

In addition to direct reference to the conditions contained in art. 18 UoBiA, applied to withdraw firearms license, the legislator gave the authority the opportunity to act in relation to a person possessing a weapon in accordance with the provisions against whom criminal proceedings are pending for the offenses referred to in art. 15 (1) (6), until the final termination of these proceedings, for a period not longer than 3 years²¹. *A contrario* it should be emphasized that in a situation where the circumstances which justify them are not confirmed as regards seizure, and when criminal proceedings for the offenses referred to in art. 15 (1)(6) UoBiA will not end in conviction, the seized firearms will be returned to its owner. In this case, returning the firearms will not result in the obligation to apply for the license again²². What is more, if the criminal proceedings did not end before the expiry of three years, it is necessary to return the weapon, ammunition and documents confirming the legality of possessing the weapon²³.

The act of seizure of firearms pursuant to art. 19 (1a) UoBiA may only be taken against the holder of the weapon against whom criminal proceedings are pending for the offenses referred to in art. 15 (1) (6) UoBiA. The concept of „pending criminal proceedings” means that there must be issued a statement of charges and he is the suspect or accused person of committing a crime²⁴. J. Majo rightly emphasizes that seizure of arms in connection with art. 19 (1a) UoBiA can be used only in the case of initiating proceedings that are already in the phase against a person (i.e. after presenting charges), and not proceedings in a case which is at the stage of general examination of the circumstances. It is only when the charges are presented to a specific person that one can even talk about the legitimacy of taking any additional legal measures against them, even in the form of seizure firearms²⁵. The Supreme Administrative Court made a firm statement in this matter in its judgment of 18/06/2019, stating that „the concept *against which criminal proceedings are pending* means that a decision must be issued to present charges, that is when a person is suspected or accused of a crime. Therefore, it is not possible to seize firearms on this basis to a person who is suspected and who has not been formally charged with committing a crime”²⁶.

The provision does not allow for the seizure of firearms due to criminal proceedings against the gun owner for any crime or misdemeanor. The weapon may be taken away only from the holder who is under criminal proceedings (suspected or accused) of the offenses referred to in art. 15 (1) (6) UoBiA. Article 15 (1) (6) UoBiA in the wording in force since 10 March 2011 provides: „weapon licenses are not issued to

²¹ Cf. art. 19 (1a) UoBiA.

²² Cf. J. Majo, *Cofnięcie pozwolenia na broń a odebranie broni...*, p. 77-78.

²³ Cf. A. Turczyn, *Odebranie broni w trybie art. 19 ust. 1a...*, op. cit.

²⁴ Cf. *Ibidem*.

²⁵ Cf. J. Majo, *Cofnięcie pozwolenia na broń a odebranie broni...*, p. 77.

²⁶ Judgment of Supreme Administrative Court of 18.06.2019, II OSK 2047/17, LEX 2702224.

persons posing a threat to themselves, public order or security: a) a convicted by final court decision for an intentional crime or intentional tax offense, b) a convicted by final court decision for an unintentional crime – against life and health, – against security in traffic committed in a state of intoxication or under the influence of a narcotic drug or when the perpetrator escaped from the place of incident²⁷.

According to B. Kurzępa, the analysis of the provision of art. 19 (1a) UoBiA leads to the conclusion that it does not comply with the constitutional principle of citizens' trust in the state, and thus also in the law established by that state, because it was formulated in a vague and imprecise way, and, moreover, puts the suspect in a much worse factual and legal situation than the person who has been finally convicted of any offense listed in art. 15 (1) (6) UoBiA. A presumption of innocence applies to the suspected person until the conviction has become final. Therefore, this provision is also inconsistent with the one expressed in art. 2 of the Constitution of the Republic of Poland by the principle of sufficient specificity of law, because it requires the use of only the formal criterion consisting in presenting to the weapon owner the charge of committing any of the offenses listed in art. 15 (1)(6) UoBiA. In its content, however, there is no reference to the substantive premise, i.e. to examine whether the holder of the firearm constitutes a threat to public security or to himself or to public order²⁸.

J. Majo is in a similar position. First, cross-references of art. 18 and 19 UoBiA create ambiguities due to the identical nature of some of the offenses for which one or the other punishment may be used. An example is the possibility of taking the weapon away from a person against whom criminal proceedings are pending for the offenses listed in art. 15 (1) (6) UoBiA, in the meantime, if he applies for a gun license, it will be issued to him - because the prerequisite is only conviction for such a crime. In addition, in the same context, an analysis of the provisions of the Act formulating the conditions for the seizure of arms, referred to in Art. 19 (1 and 1a) UoBiA may raise reservations as to the solutions provided for therein. It is difficult to understand the logic of the legislator, which requires the authority, in the event of the seizure of firearms of a person convicted of a specific crime, to show that delaying this act would endanger public security, and in the case of only initiating such proceedings for theoretically the same crime the circumstance of the impact on public security is no longer taken into account. In other words, to address this issue; a person convicted of a crime may be preventively deprived of firearms, but only if it threatens public security. On the other hand, a person who is only suspected of committing this crime firearms can be taken away regardless of whether he threatens public security or not.

The confirmed offense is in fact, treated more gently than the alleged offense, because in the case of the first one the authority still has to examine an additional premise, which is undoubtedly a hindrance to the proceedings and thus makes its

²⁷ Cf. A. Turczyn, *Odebranie broni w trybie art. 19 ust. 1a...*, op. cit.

²⁸ Cf. B. Kurzępa, *Glosa do wyroku TK z dnia 18 grudnia 2013 r.*, P 43/12, LEX No. 16836326.

settlement less automatic. Shouldn't it be exactly the opposite, because convicting someone for a crime is more burdensome than just initiating proceedings for a given crime, which is not known how it will end?²⁹

A. Turczyn is of another opinion citing the judgment of the Constitutional Tribunal of 18.12.2013 believes that even formal fulfillment of the premises does not allow for seizure of firearms in every case. According to the position of the Constitutional Tribunal, the use by the legislator in art. 19 (1a) UoBiA of the word „may” is a clear indication to the authorities applying the law that carrying out the analyzed material and technical activity is permissible only if there is a fear that the suspect / accused of committing an offense under Art. 15 (1)(6) UoBiA would pose a threat to public safety or order or to the freedoms and rights of others³⁰. Therefore, when performing a material and technical activity referred to in art. 19(1a) of the aforementioned Act, the authority is obliged to express its conviction that in a specific situation the owner of the weapon who has been charged with an offense from the catalog contained in art. 15 paragraph 1(6) UoBiA, may pose a threat to the security or legal order, or to the freedoms and rights of others³¹. Other administrative courts spoke in a similar vein³².

In addition, it should be noted that the legislator in art. 15 (1)(6) UoBiA decided that a final conviction of a gun owner, even for one of the offenses listed in it, defines him as a person who poses a threat to himself, public order or security. The legislator distinguishes the holder, in relation to whom only a decision has been issued, on presenting a charge of committing a crime, from a person legally convicted for such a crime. However, this did not prevent the legislator, after the introduction of paragraph 1a into the act in question in art. 19 UoBiA, treat the owner of a hazardous weapon in an equal manner (Article 19 (1) in conjunction with Article 15 (1) (6) UoBiA) and the one who, at least potentially, does not create such a threat (Article 19 (1) 1a UoBiA). In this context, one can see the incompatibility of Art. 19 (1a) UoBiA with the principle of equality expressed in art. 32 (1) of the Polish Constitution³³.

The Constitutional Tribunal has commented on the above issue in response to the doubts of the Provincial Administrative Court in Poznań³⁴, in the judgment cited above on December 18, 2013: „The Tribunal states that the accusation (...) is unfounded. It results from a misconception about the similarity of the legal situation of a con-

²⁹ Cf. J. Majo, *Cofnięcie pozwolenia na broń a odebranie broni...*, p. 78.

³⁰ Judgment of the Constitutional Tribunal of 18.12.2013, P 43/12, LEX No. 1405426.

³¹ Cf. A. Turczyn, *Odebranie broni w trybie art. 19 ust. 1a...*, op.cit.

³² Cf. Judgment of Provincial Administrative Court in Kielce of 11.01.2018, II SA/Ke 831/17, LEX 2442862; judgment of Provincial Administrative Court in Kielce of 22.02.2018, II SA/Ke 22/18, LEX 2462770; judgment of Supreme Administrative Court of 18.06.2019, II OSK 2047/17, LEX 2702224; judgment of Provincial Administrative Court in Poznań of 16.04.2014, II SA/Po 235/14, LEX 1460256; judgment of Provincial Administrative Court in Kielce of 03.10.2018, II SA/Ke 508/18, LEX 2610546.

³³ Cf. B. Kurzępa, *Glosa do wyroku TK...*, op. cit.

³⁴ Decision of Provincial Administrative Court in Poznań of 10.10.2012, II Sa/Po 583/12, LEX 1258478.

vict for an offense listed in art. 15 (1)(6) of the UoBiA and the suspected / accused person of such an offense, when in fact they are different entities". It is incorrectly assumed – the Judges of the Constitutional Tribunal emphasize – that „ the accused of committing a crime listed in art. 15 (1)(6) UoBiA is treated worse than a person convicted for committing such a crime. (...) In accordance with art. 20 UoBiA, withdrawal of a weapon license, admission to possession of a weapon and annulment of the registration of a pneumatic weapon takes place by means of an administrative decision.

For factual or procedural reasons, such a decision may be issued with a certain delay. Until the end of the proceeding regarding withdrawal of the license to own a gun under Art. 18 UoBiA, convicted of a crime can actually still have weapons and ammunition. For this reason, the legislator decided to introduce the regulation of art. 19 (1) UoBiA, which allows seizure of firearms, ammunition and the license if the delay would endanger public safety. It should be noted that, contrary to what the court asserts, the legislator does not treat the convicted person for the crime listed in art. 15 (1)(6) UoBiA milder than the accused for committing such crimes. In the case of a convicted person, the gun license will be withdrawn anyway and the weapons and ammunition owned will be seized. (...) In the case of an accused person who committed the crimes listed in art. 15 (1)(6) UoBiA, the legislator – unlike the convicted person – only permits, not orders – the Police to take material and technical action to seize firearms, ammunition and a document confirming the legality of possessing a weapon. (...) For these reasons, the Tribunal has no grounds to refute the presumption of conformity of the challenged provision with Art. 32 (1) of the Constitution"³⁵.

FORMS OF SEIZURE OF FIREARMS AND THEIR DEPOSIT

Preventive protection of weapons firearms down to the deposit of weapons, which is the case in most cases. In accordance with art. 51 (2)(1) UoBiA failure to comply with the obligation to surrender weapons and ammunition is an offense punishable by arrest or a fine. However, as S. Maj notes, the use of the word „seizure” means that in the event of resistance, the seizure of arms and ammunition may occur on a forced basis. An officer who seizes a weapon under Art. 19 UoBiA, should first call the person for his voluntary handing. Preventive protection is therefore not dependent on the goodwill of the gun owner. In the event of non-compliance with the orders of the Police authorities or its officers issued on the basis of law, police officers may use direct coercive measures, including physical, technical and chemical means used to incapacitate or escort people and to stop vehicles (Article 16 (1) (1) of the Police Act)³⁶.

As emphasized in the judgment of the Supreme Administrative Court of 03.07.2019, „the act of seizure of firearms referred to in art. 19 (1a) of the Act, is

³⁵ Judgment of the Constitutional Tribunal of 18.12.2013 r., P 43/12, LEX No. 1405426.

³⁶ Cf. S. Maj, *Ustawa o broni i amunicji...*, op. cit., art. 19.

taken outside of the formalized administrative procedure – i.e. the provisions of the Code of Civil Procedure do not directly apply to it. Secondly, provided for in art. 19 (1a) UoBiA seizure of firearms and ammunition as well as documents confirming the legality of possessing a weapon is other than an administrative act “a public administration activity” within the meaning of art. 3 § 2(4) of the Act – Law on Proceedings before Administrative Courts – so-called material and technical activity³⁷. However, this does not mean agreement to take action without justification. This was particularly noticed by the Voivodship Administrative Court in Kielce in the judgment of 18.06.2014 „performing the substantive and legal act referred to in art. 19 (1a) UoBiA, the authority should express its position indicating the circumstances justifying the statement that the applicant against whom the criminal offense proceedings referred to in art. 15 (1)(6b) UoBiA, poses a threat to himself, public order or security. The authority issuing the contested order did not perform such activities violating art. 19 (1a) UoBiA, which repeals the contested act pursuant to art. 146 § 1 the Act – Law on Proceedings before Administrative Courts. The body’s limitation therefore, to proposing that the applicant was undergoing criminal proceedings as referred to in Article 18 (1)(2) in connection from art. 15 (1)(6b) UoBiA is laconic and does not justify performing actions in the context of the regulation constituting the basis for the body’s operation. (...) The issue of justification of the need to perform a material and technical activity that is the subject of this case may occur in any form, e.g. a letter, provided that in a situation where a person is accused / suspected of committing the offenses referred to in art. 15 (1)(6) UoBiA, the authority will refer to the substantive premises of its admissibility. It is therefore necessary to demonstrate that such a person would pose a threat to himself, to security or to public order. (...) The method of regulation of art. 19 (1a) UoBiA therefore leads to the conclusion that the material and technical act of seizure of firearms, ammunition and documents consists of two elements: the preceding act, in which the authority explains the reasons for which it performs the act and the act itself³⁸. A similar position was taken by the Provincial Administrative Court in Poznań, which in its judgment of 16.04.2014 stressed that „it is sufficient to send a letter to the holder of the weapon explaining the reason for doing so. This justification may also appear on the document of receipt for seizure of firearms³⁹”.

It follows from the above that the duty of officers or the authority is to issue a receipt for the seizure of firearms⁴⁰. Formally, it has no specific standard. It can be handwritten so that one knows who is responsible for seizing of firearms and which firearms were seized. One copy of the receipt should go to the person from

³⁷ Judgment of Supreme Administrative Court of 03.07.2019, II OSK 1639/18, LEX No. 2740805.

³⁸ Judgment of Provincial Administrative Court in Kielce of 18.06.2014, II SA/Ke 297/14, LEX 1546854.

³⁹ Judgment of Provincial Administrative Court in Poznań of 16.04.2014, II SA/Po 235/14, LEX 1460256.

⁴⁰ Judgment of the Constitutional Tribunal of 18.12.2013, P 43/12, LEX No. 1405426.

whom the weapon was seized, and the other to the deposit with the weapon⁴¹. In the literature on the subject, nothing is mentioned about the detailed form of receipt confirming the seizure of the situation is similar in case-law. For example, in the judgment of 03.07.2019 the Supreme Administrative Court explicitly stated that „provisions of substantive law do not specify the legal form in which the body operating pursuant to art. 19 (1a) UoBiA should justify its position regarding the need to seize the firearms. The aforementioned provision only requires that the preventive seizure of firearms, ammunition and a valid document be made *against receipt*”⁴². Similarly, the Provincial Administrative Court in Kielce ruled on 11.01.2018: „The provision only requires that the preventive seizure of firearms, ammunition and a valid document be made against receipt. That requirement in the present case has been met”⁴³.

However, it is widely known that many weapons have high material, historical, commemorative or collector's value, etc. Damage to it or destruction as a result of incorrect depositing may cause serious damage to its owner. This administrative and legal gap requires specific regulation on the part of the legislator in order to eliminate the existing legal dissonance, in which the legislator secures the social interest (public order) by the institution of seizure of firearms and does not safeguard the legitimate interest of the owner (his material good) by creating a guarantee of proper deposit of his property.

The costs associated with depositing firearms and ammunition are borne by the Police or Military Gendarmerie in the event of their transfer to a deposit, in accordance with art. 19 (1 and 3) and art. 23 (1)(1) UoBiA. However, this obligation lasts until the basis for storing the weapon has changed. After the withdrawal of the license, the cost of the deposit will be charged to the owner whose license has been withdrawn from the date the decision withdrawing the license becomes final.

THE RIGHT TO APPEAL DECISIONS

Seizure of firearms is a material and technical activity that belongs to the category of public administration activities regarding rights or obligations arising from legal provisions. As a consequence, the person against whom an act has been carried out has the right to lodge a complaint against such an act with an administrative court. In this context, two procedural issues should also be highlighted. First of all - which was emphasized in the judgment of the Provincial Administrative Court in Kielce of 11.01.2018- „in the event of the seizure of firearms and ammunition under Article 19 (1a) UoBiA no “settlement” by the authority is issued. These activities are directed towards achieving a state of affairs,

⁴¹ Cf. S. Maj, *Ustawa o broni i amunicji...*, op. cit., art. 19.

⁴² Judgment of Supreme Administrative Court of 03.07.2019, II OSK 1639/18, LEX No 2740805.

⁴³ Judgment of Provincial Administrative Court of 11.01.2018, II SA/Ke 831/17, LEX 2442862.

and not to cause specific legal effects”⁴⁴. Such actions of the administration body reflect the legislator’s intention expressed in the norm of art. 19 UoBiA – signaled at the beginning of these considerations – namely they are aimed at provoking a specific fact of a preventive nature, and not at provoking specific legal effects. Secondly, as expressed by the Provincial Administrative Court in Poznań in the decision of 2 April 2015, “The provisions of the Act of 21 May 1999 on firearms and ammunition (Journal of Laws of 2012, item 576, as amended) do not provide for a complaint against the above decision. It is also not a decision closing the proceedings in a case, as it does not end the administrative proceedings in a given instance. This provision also does not resolve the administrative matter as to its substance and can be appealed only in appeal against the decision (Article 123 § 2 of the Civil Procedure Code and Article 142 of the Civil Procedure Code). The Civil Code Procedure does not provide for complaints against such provisions. Consequently, the complaint lodged against the decision regarding the retention of firearms, ammunition and firearms license for deposit is inadmissible and is subject to rejection pursuant to art. 58 § 1 (6) the Act – Law on Proceedings before Administrative Courts”⁴⁵. In accordance with art. 52 § 3 of the Act – Law on Proceedings before Administrative Courts (...) complaint about acts or activities referred to in art. 3 § 2(4 and 4a) of the Act – Law on Proceedings before Administrative Courts, may be lodged after a prior request in writing of the competent authority – within 14 days from the day on which the applicant learned or was able to find out about the issue of the act or taking other action – to remove the violation of law. In the event of an intention to challenge the removal of a weapon, it is important to call the Police or Military Gendarmerie to return the weapon, ammunition and documents confirming the legality of possessing the weapon within 14 days from the seizure of firearms⁴⁶. Violation of the above period of administration or omission results in consequence of the inadmissibility of appeal lodged at the administrative court. The Supreme Administrative Court made a comprehensive statement on this matter in the decision of 14/03/2017 “The applicant omitted the general obligation to exhaust appeals in the case, i.e. after learning of the issue of the defective act or taking such action, he directly lodged a complaint against it with the administrative court. In the light of the above, it should be stated that the voivodship court was obliged to examine ex officio the admissibility of the complaint, determining whether there is one of the conditions for its rejection, enumerated in art. 58 § 1 of the Act – Law on Proceedings before Administrative Courts (...) In accordance with art. 52 § 3 of the Act – Law on Proceedings before Administrative Courts if the Act does not provide for appeals in the matter that is the subject of the complaint, a complaint about the acts or activities referred to in art. 3 § 2 (4 and 4a) of this Act, may

⁴⁴ Judgment of Provincial Administrative Court in Kielce of 11.01.2018, II SA/Ke 831/17, LEX No. 2442862.

⁴⁵ Decision of Provincial Administrative Court in Poznań of 02.04.2015, II SA/Po 141/15, LEX No. 1760501.

⁴⁶ Cf. A. Turczyn, *Odebranie broni w trybie art. 19 ust. 1a...*, op. cit.

be lodged after a prior request in writing of the competent authority – within 14 days from the day on which the applicant learned or was able to find out about the issue of the act or taking other action – to remove the violation of law. The court, after filing the complaint, may find that the failure to comply with this deadline occurred without the applicant's fault and examine the complaint. (...) In the case under consideration, there is no doubt that the summon to remove the violation of law was lodged with the Police authority in violation (as provided for in art. 52 § 3 of the Act – Law on Proceedings before Administrative Courts) of a 14-day period to make such a request, which made the complaint inadmissible. As it results from the documents collected in the files of the present case, the applicant learned about the issue of the subject of the complaint – a letter from the Province Police Department in Szczecin of (...) January 2015 – on 27 January 2015, when it was delivered to him. Meanwhile, a summons to remove the violation of the abovementioned law by act (letter of 26 August 2015) was not submitted to the Police body until 27 August 2015 (...) The analysis of the documents and explanations submitted by the applicant in response to the provincial court's summons led the court to the correct conclusion that there were no grounds to believe that the failure to comply with that deadline had been the fault of the applicant. There is no evidence in the case file that, between the delivery of the applicant's letter of (...) January 2015 and the request of the Police authority to remove the violation of law of 26 August 2015, or in the earlier period, the applicant addressed letters to the Province Police Department or statements previously unknown to the authority regarding the return of detained arms and ammunition. The applicant did not submit evidence of such an appeal to the authority on the abovementioned summoning the province court re-examining the case. However, the applicant's own reference to "attempts to clarify this matter" at the Police Station in Szczecin, the Central Bureau of Investigation and the District Prosecutor's Office in Warsaw without sending relevant documentation confirming these circumstances could not be considered evidence in the case⁴⁷. In this context, it should be emphasized that the applicant not only failed to meet the deadline – as alleged by the administrative court – but also (which the court did not emphasize), he disregarded the fundamental principle of administrative proceedings, namely the principle of writing expressed in art. 14 of the Code of Civil Procedure⁴⁸. This ultimately resulted in the loss of evidence which could convince the court to the applicant's argument.

⁴⁷ Judgment of Supreme Administrative Court of 14.03.2017, II OSK 404/17, LEX 2256630.

⁴⁸ § 1. Cases should be dealt with in writing or in the form of an electronic document within the meaning of the provisions of the Act of 17 February 2005 on the computerization of the activities of entities performing public tasks (Journal of Laws of 2017, item 570 and of 2018, item 1000, 1544 and 1669), delivered by electronic means of communication. § 2. Matters may be dealt with orally, by phone, by means of electronic communication within the meaning of art. 2 (5) of the Act of 18 July 2002 on the provision of electronic services (Journal of Laws of 2017, item 1219 and of 2018, item 650) or by other means of communication, when the interests of the parties so indicate, and the legal provision does not preclude it. The content and significant motives of such settlement should be recorded in the files in the form of a protocol or signed by the annotation page. – Art. 14 of the Code of Civil Procedure

As emphasized in the same decision, „the rejection of the complaint does not prevent the applicant from taking further action to recover the detained weapon, and any acts of refusal by the Police authority may be the subject of a separate administrative court complaint, taking into account the special procedure for such control”⁴⁹.

The court, after filing the complaint, may also find that the time limit was breached without the applicant’s fault and in this situation consider the complaint. This situation was stated in the judgment of the Provincial Administrative Court in Poznań. The court noted that „in the present case it is beyond dispute that the applicant requested the Provincial Commander to demand the removal of the violation of law (in a letter of 13 June 2016 - pp. 46-50 of the administrative files), except that he did it after exceeding the 14-day period, referred to in art. 52 § 3 1st sentence the Act – Law on Proceedings before Administrative Courts), as after nearly seven months from the day on which the applicant learned about the Authority taking the act in question (i.e. from 19 November 2015, which was the date of delivery to the applicant of the letter of the Authority of (...) November 2015) .

Despite this, the application in the defense to reject the complaint due to failure to comply with the abovementioned the deadline did not deserve to be included. The court considered that the failure to meet this deadline was the fault of the applicant, because –which is undisputed – he was not informed about the manner and time of appealing against the act in question; in particular, the relevant instruction did not include the abovementioned letter from (...) November 2015. Admittedly, the act of seizure the firearms referred to in art. 19 (1a) the Firearms Act is undertaken outside of the formalized administrative procedure – i.e. the provisions of the Code of Civil Procedure they do not directly apply to it – this does not mean, however, that the authority is not obliged to inform the person against whom this action is directed about its means of appeal and the manner and time limit for lodging a complaint to an administrative court. The obligation to provide such instruction also in cases other than those regulated by the Code of Civil Procedure administrative decisions, authoritative forms of public administration, result from the general principle of lawful operation of public administration bodies and the principle of increasing trust in public administration bodies, resulting from art. 7 and art. 2 of the Polish Constitution. According to settled judicial decisions, the lack of instruction (as well as incomplete, defective or unclear instruction) means that the failure to comply with the time limit for lodging a complaint is not attributable to the party and may be the basis for a request to restore the time limit”⁵⁰. As a side note, it is worth noting that the constitutional regulations cited in the judgment of the Provin-

⁴⁹ Judgment of Supreme Administrative Court of 14.03.2017, II OSK 404/17, LEX 2256630.

⁵⁰ Cf. Judgment Provincial Administrative Court in Poznań of 19.01.2017, IV SA/Po 694/16, LEX 2239428. In this matter, the Provincial Administrative Court in Poznań cited, among others on: resolution Supreme Administrative Court of 9.02.2012, II OZ 61/12, LEX No. 1116333.

cial Administrative Court were also reflected in the Code of Administrative Procedure: in art. 6 (rule of law) and in art. 8 (the principle of deepening the confidence of participants in proceedings before public authorities), but they also have a direct relationship with 9 (principle of providing information to parties to proceedings)⁵¹. A complaint to the competent local provincial administrative court shall be lodged within 30 days from the date of delivery of the authority's response to the summons to remove the violation of law, and if the authority did not respond to the summons, within 60 days from the date of the summons to remove the violation of law (Article 53 § 2 the Act – Law on Proceedings before Administrative Courts)⁵².

CONCLUSIONS

The jurisprudence relating to UoBiA explicitly accepts the view that in Poland the possession of weapons is regulated and permissible only if certain conditions are met. Under the UoBiA, the legislator decided to limit the possibility of exercising the ownership of weapons. According to the Constitutional Tribunal, the value supporting such a decision of the legislator was primarily guaranteed in art. 38 of the Constitution, the fundamental right of every human being – the right to life. Therefore, in the case of legal possession of weapons, we can speak of the exercise of ownership, but this is a limited right to exercise ownership⁵³. Therefore, the institution of seizure of firearms will always stand in opposition to the above law, even if it is regulated and admissible under strict conditions. Thus, the action of administrative bodies in many cases will lead to tension on the line of the legitimate interest of the citizen (gun owner) and social interest, on the line of the external security of the state and its internal security. Balancing these proportions rests with the institutions of the executive (administration) and judiciary. However, this will only be possible through precise and unmistakable provisions emanating from the legislative authority.

⁵¹ Public administration bodies operate on the basis of legal provisions. – Article 6 of the Code of Civil Procedure; § 1. Public administration bodies conduct proceedings in a way that inspires the confidence of its participants in public authority, guided by the principles of proportionality, impartiality and equal treatment. § 2. Bodies of public administration shall not depart from established practice of settling cases in the same factual and legal state without a justified reason. – Art. 8 of the Code of Civil Procedure. Public administration bodies are required to duly and exhaustively inform the parties about factual and legal circumstances that may affect the determination of their rights and obligations that are the subject of administrative proceedings. The authorities ensure that the parties and other persons participating in the proceedings do not suffer damage due to ignorance of the law, and to this end provide them with the necessary explanations and instructions. – Art. 9 of the Code of Civil Procedure.

⁵² Cf. A. Turczyn, *Odebranie broni w trybie art. 19 ust. 1a...*, op. cit.

⁵³ Judgment of the Constitutional Tribunal of 18.12.2013 r., P 43/12, LEX No. 1405426.

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