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**DECISION AS A LEGAL FORM OF ISSUING
A WEAPON LICENSE FOR A POLICE OFFICER**

The word weapon in prehistoric times was the name of the action, it meant “battle, battle”, and referred to both the phase of attack and defence. In addition to this functional meaning, a secondary objective meaning “combat tool” was created, which became the main meaning¹. So the concept of weapons is understood very broadly, because weapons are commonly considered as a combat tool for defence or attack².

Issues related to firearms are regulated in the Act of 21 May 1999. about weapons and ammunition³. This act lays down the rules for issuing and withdrawing permits for weapons, the acquisition, registration, storage, sale and deposit of weapons and ammunition, carriage through the territory of the Republic of Poland, as well as the import from abroad and the export of weapons and ammunition abroad, as well as the rules on possessing weapons and ammunition by foreigners and how the shooting ranges operate. It divides weapons into four types:

- 1) firearms, including combat, hunting, sport, gas, alarm and signal weapons,
- 2) pneumatic weapon,
- 3) stunting gas throwers,
- 4) tools and devices, the use of which may threaten life or health:
 - a) melee weapons in the form of:
 - blades hidden in objects that do not look like weapons,
 - brass knuckles and knuckles,
 - clubs with a tip of heavy and hard material or containing inserts of such material,
 - clubs made of wood or other heavy and hard material imitating a baseball bat,

¹ <https://sjp.pwn.pl/poradnia/haslo/bron;6826.html> (10.06.2020).

² S. Maj, *Ustawa o broni i amunicji. Komentarz*, Lex/el. 2010 (10.06.2020).

³ Dz.U. 2020, Item 955.

- b) a bow weapon in the form of crossbows,
- c) items intended to incapacitate persons by means of electricity.

The definition of firearms has been regulated in detail in Art. 7, item 1 of the Act on Weapons and Ammunition, according to which any portable barrel weapon that launches, is designed to be fired or can be adapted to shoot one or more projectiles or substances as a result of the action of the propellant. However, as indicated by the Supreme Court in the decision of 22 January 2003, the act contains an incomplete scope definition of firearms, because it does not list all elements of the set of devices referred to as firearms, including only by way of example (as determined by the phrase “including”), among others gas, alarm weapons, etc. In other words, firearms will also include devices other than just combat, hunting, sports, gas, alarm and signal weapons. These may be atypical devices that will appear, obviously, with the ever faster technical development of types and types of weapons, and which, without being a combat, hunting, sport, gas, alarm and signal weapon, will meet the criteria contained in the content definition from the Art. 7 of the Act. It is clear, therefore, that Art. 7 of this act contains a substantive definition of the concept of firearms, indicating all these characteristics to which all elements of the set of devices referred to as firearms must comply, and not only those which have been mentioned, for example, in the scope definition adopted in Art. 4, item 1, point 1. In other words, firearms are all devices that are included in it in Art. 4, item 1, point 1, and unnamed ones that may appear in the future. Therefore, when interpreting the provisions of Art. 4, item 1, point 1 and Art. 7 of the Act, in order to determine whether a device should be included in a firearm, it is necessary to check whether it is covered by an incomplete scope definition (if so, it is undoubtedly a firearm), and if not, then, using the content definition from Art. 7 of the Act, determine whether it meets the criteria listed therein⁴. On the other hand, the Court of Appeal in Kraków does not recognize as a firearm a characteristic of the stricter legal qualification of some units of gas, signal, take-off, bang, various scare weapons, corkers and other toys. They are not dangerous to life or health. The court decided that in cases concerning these offenses one should not uncritically take over the provisions of Art. 4, item 1 of the Act. Indeed, although they are significant for the production of weapons or rotate, guaranteed standards blankietowymi Art. 263, § 1–4 of the Criminal Code should not be transferred to the crimes in which the perpetrator of the wine does not depend on the regulation of administrative law, as the law on weapons⁵.

For many decades, the concept of firearms did not have a legal definition that clearly defined what could be considered a firearm and what could not be considered such a weapon. This was a fairly serious problem, because firearms were subject to and still subject to rationing, and the lack of an unambiguous defini-

⁴ I KZP 40/02, OSNKW 2003, No. 1–2, Item 11.

⁵ Judgment of the Court of Appeal in Krakow of 5 December 2001, II AKa 269/01, Lex No. 56684.

tion led to the fact that it was unclear whether an item could be classified as a firearm and thus regulate it, or whether it could not be regulated. The lack of a clear definition of firearms was also troublesome in criminal matters. The science of forensics decided to be the first to clearly define the term “firearms” in order to resolve all doubts, which resulted in the definition of firearms in Art. 7, item 1 of the Act on arms and ammunition⁶.

Various definitions of firearms appear in the literature. According to T. Hanusk, a firearm is a tool (instrument) which, in its intended use, can be dangerous to human life or health and is capable of repeated bullet shooting at a considerable distance and has the ability to shoot bullets or non-solid substances, as well as thermal or optical effects due to the use of electromagnetic waves⁷. In turn, S. Adamczak defines firearms as an instrument (device) in which compressed gases, generated during the burning of the propellant, eject a projectile (projectiles) from the barrel or an element replacing it⁸.

On the other hand, in colloquial language, firearms are most often understood as a tool with which an object (bullet) is launched, which offends selected targets from a given distance, while in technical language firearms are most often defined as weapons that eject bullets with the force of gases generated during the burning of gunpowder⁹.

In view of the above, it is difficult to point to one definition of the concept of firearms. In case of doubt, the question whether a given device is a firearm is evaluated by experts and ultimately the courts decide¹⁰. The central role in the examination of the above is fulfilled by the Central Forensic Laboratory of the General Police Headquarters and forensic laboratories at the provincial police headquarters. The tasks of the Central Forensic Laboratory of the Police Headquarters include the performance of expert work in the field of forensics, including approval of technical specifications and confirmation of deprivation of firearms' functional features.

In the Polish legal system, two groups of entities may apply for access to firearms. They are natural persons and legal persons.

Natural persons may purchase and possess weapons on the basis of an issued permit pursuant to the provisions of the Act on arms and ammunition. However, there are several groups that receive access to firearms on slightly different rules. The first of these groups are officers and soldiers. Pursuant to Art. 3, point 1 of the Act on arms and ammunition, the provisions of the Act do not apply to arms and ammunition constituting the armament of the Armed Forces of the Republic of Po-

⁶ R. Rejmaniak, *Wyrabianie, handel i posiadanie broni palnej oraz amunicji*, Toruń 2017, p. 21.

⁷ T. Hanusek, *Problemy z bronią palną*, „Gazeta Policyjna” 1998, No. 47.

⁸ S. Adamczak, *Pojęcie broni palnej*, „Problemy Kryminalistyki” 1967, No. 66, p. 205.

⁹ <https://sjp.pwn.pl/sjp/bron-palna;2446158.html> (10.06.2020).

¹⁰ S. Maj, *Ustawa o broni...*

land, the Police, the Internal Security Agency, the Foreign Intelligence Service, the Military Counterintelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau, the State Protection Service, Border Guards, Marshal Guards, Customs and Tax Service, Prison Service and other state armed formations, for which access to arms and ammunition is regulated by separate provisions.

Qualified security guards are another group of natural persons using firearms. Pursuant to Art. 36, paragraph 1, point 5 of the Act of 22 August 1997 on the protection of persons and property¹¹, security guard while performing the tasks of protecting persons and property has the right to use or use firearms:

- within the limits of protected facilities and areas, and
- outside of protected facilities and areas.

Detailed rules for the use of weapons by the aforementioned groups of persons are regulated by the provisions of the Act of 24 May 2013 on direct coercion measures and firearms¹². Security guards also use firearms on a daily basis, and they have access to firearms used for official purposes on a slightly different basis¹³.

The last group of entities belonging to natural persons are employees of diplomatic and consular missions and foreigners. Pursuant to Art. 39, item of the Act on arms and ammunition, members of diplomatic missions and consular posts, as well as persons equated with them under international agreements, may possess weapons and ammunition under international agreements or on the basis of reciprocity for the purposes of: 1) personal protection; 2) hunting; 3) sports; 4) collector's items; 5) commemorative. These persons may possess a weapon on the basis of an appropriate permit issued by a competent police authority. On the other hand, other foreigners may possess firearms based on, among others European Firearms Charter, international agreements or reciprocity agreements, which is often used in international law¹⁴. On the basis of this card, a foreigner may legally move with a weapon to another EU country.

Considering the above, it should be pointed out that many natural persons use firearms on a daily basis pursuant to separate regulations but, which should be emphasized, only during the performance of their service. In a situation where these people want to have a weapon for their own use, they must apply for a permit on general terms.

Legal entities are the second category of entities that may have access to firearms. These persons will have access to firearms based on a weapon certificate issued by the competent authority. The weapon certificate is nothing but a gun

¹¹ Dz.U. 2020, Item 838 as amended.

¹² Dz.U. 2019, Item 2418 as amended

¹³ M. Jurgilewicz, *Rola podmiotów uprawnionych do użycia lub wykorzystania środków przymusu bezpośredniego i broni palnej w ochronie bezpieczeństwa i porządku publicznego*, Siedlce 2017, pp. 300–303.

¹⁴ W. Góralczyk, S. Sawicki, *Prawo międzynarodowe publiczne w zarysie*, Warszawa 2015, p. 28.

permit, except that the permit is issued for the so-called bearer. The possession of a weapon certificate by a legal person is not tantamount to the fact that every employee of this entity may use a weapon. Employees who will perform activities from the employment relationship for which they need a weapon will have to undergo a procedure after which they will obtain permission to use the weapon, but only for the purposes of performing their work.

To entities that are not natural persons the act on weapons and ammunition includes:

- entrepreneurs and organizational units that have established internal security services on the basis of separate provisions, if the weapon is necessary for the performance of these services by the security services,
- entrepreneurs who have obtained concessions for conducting business activities in the field of security services for persons and property, if the weapons are necessary for them in the scope and forms specified in the concession,
- entities operating a shooting range,
- schools, sporting and hunting organizations, defense associations for the purpose of training and carrying out shooting exercises or other educational establishments as well as course organizers educating the security officer,
- entities performing tasks related to the implementation of films and other artistic undertakings,
- offices, institutions, plants, entrepreneurs and other entities whose employees weapons are necessary for personal protection in connection with the performance of their employee duties related to particular exposure to attacks on life or health,
- entities, which weapons are necessary to call for help, rescue, search and signal the start of competition in sports competitions.

As already indicated above, one of the groups of entities applying for a weapon, including firearms, are police officers. Firearms and ammunition for these weapons, pursuant to Art. 9 of the Act on weapons and ammunition, may be held on the basis of a weapon permit issued by the competent for the place of permanent residence of the person concerned or the seat of the entity concerned by the provincial police commander. Derogations from the obligation to possess a gun permit are provided for in Art. 11 of the Act and apply to:

- collecting weapons in museum collections based on separate provisions,
- use of weapons for sporting, training or recreational purposes at the shooting range operating on the basis of the permission of the competent authority,
- the use of signal and alarm firearms for the purpose of calling for help, rescue, search and by persons authorized to signal the start of sporting competition during sporting competitions, if it requires such signaling,
- disposal of arms by entrepreneurs trading in arms and ammunition on the basis of concessions or providing gunsmith services on the basis of separate provisions, as long as it is directly related to conducting business activity,

- disposing of weapons transferred to deprive or confirm deprivation of functional characteristics,
- possessing firearms without functional features,
- possessing objects intended to incapacitate persons by means of electricity with an average value of current in the circuit not exceeding 10 mA,
- having manual incapacitation gas throwers,
- possessing a pneumatic weapon,
- possessing separate loading firearms manufactured before 1885 and replicas of these weapons,
- possessing an alarm firearm with a caliber up to 6 mm.

However, it should also be noted that in the case of weapons that are characterized by weaker firepower, such as gas throwers or pneumatic weapons, the competent authority for issuing the permit or its registration is the poviats police commander, and in some cases the municipal commander may also be the competent authority Police, which in selected urban areas is the equivalent of the poviats police commander.

Weapon permits may be issued for personal protection purposes. The conditions for granting permission for these purposes are specified in Art. 10, item 3, point 1 of the Act. To obtain a permit on this basis, the applicant should show an important reason justifying that at the time of his application there is a permanent, real and above average threat to his life, health or property. The authority, after confirming that all the conditions listed in the provision actually exist, also on the date of the resolution of the case, unless there are reasons excluding the granting of the permit, should issue a decision appropriate to the circumstances of the case. As noted by the Supreme Administrative Court, the condition for granting a weapon permit for personal protection purposes is therefore a strictly defined legal relationship of circumstances, which, when combined, may constitute an important reason justifying the granting of a permit. One of these prerequisites is a permanent threat to the applicant's life, health or property, which cannot therefore be a circumstance that has occurred in the past and is no longer present, since there is no permanent risk element. Since all three of the listed premises characterizing the threat (stability, reality and above average) must occur jointly, the statement that one of them does not occur means that the remaining premises lose their *raison d'être* in the sense that they cannot justify successfully applying for a weapon permit. Therefore, even a real and above average threat, which is not permanent, but has happened in the past and is no longer present, cannot be considered an important reason for granting a weapon permit for personal protection¹⁵.

The basic condition for issuing a weapon permit is that the applicant does not pose a threat to himself, public order or security and will provide a valid reason for having a gun.

¹⁵ Judgment of the Supreme Administrative Court of 25 June 2015, II OSK 2836/13, Lex No. 1780579.

Before issuing a firearm to a police officer, his knowledge of the construction and operating principles of the firearms awarded and the safety conditions of using firearms are checked. Verification activities are carried out by a person or persons appointed by the head of the Police unit or a person authorized by him. You can refrain from checking the knowledge of a police officer in the above scope if a police officer is granted a short firearm no later than 12 months from the date of completing basic vocational training or who is re-awarded a firearm of the same type¹⁶. The competent authority issues a weapon permit after passing the exam by the police officer, which is conducted before a commission appointed by the competent police authority. The exam concerns the knowledge of the rules regarding the possession and use of a given weapon and the ability to use that weapon. Detailed rules are set out in the ordinance of the Minister of the Interior and Administration regarding the exam on knowledge of the provisions on the possession of weapons and the ability to use weapons¹⁷.

In the procedure for issuing a permit for weapons, doctors and psychologists play an important role, who check whether a given applicant for a weapon has any health contraindications. Lists of such doctors and psychologists who can issue decisions regarding access to weapons are kept by each voivodship commander of the Police for each voivodship¹⁸. The medical examination includes a general assessment of the state of health, with particular emphasis on the nervous system, mental state, condition of the organ of vision, hearing and balance as well as efficiency of the musculoskeletal system. The doctor conducting this examination directs the applicant for psychiatric and ophthalmological examinations, and if he deems it necessary – for other specialist or auxiliary examinations. The applicant's psychological examination includes, in particular, determining the level of intellectual development and description of personality traits, including functioning in difficult situations, as well as determining the level of social maturity of that person.

The permit for a weapon is issued at the request of the person concerned (a police officer), which means that under no circumstances may proceedings be instituted *ex officio*. The application shall include the applicant's data, taking into account the place of employment, any weapon licenses held and the number of weapons units held. The application shall also provide information on whether the applicant has previously received a refusal or withdrawal decision, as well as

¹⁶ § 5, points 1 and 2 of the Regulation No. 24 of the Police Commander-in-Chief of 21 July 2015 on detailed rules for the granting and use of firearms by police officers (Dz.Urz. KGP 2015, Item 57 as amended).

¹⁷ Ordinance of the Minister of the Interior and Administration of 20 March 2000 on the examination of knowledge of the provisions on the possession of weapons and the ability to use weapons (Dz.U. 2017, Item 1756).

¹⁸ A. Babiński, *Udział organów Policji w reglamentacji broni i amunicji* [in:] *Prawo policyjne*, eds. M. Czuryk, M. Karpiuk, J. Kostrubiec, K. Orzeszny, Warszawa 2014, pp. 122–123.

information on no criminal record. The application is accompanied by a medical and psychological certificate stating that the applicant may have a weapon, issued by an authorized doctor and psychologist, not earlier than 3 months before the date of submission of the application. Each application must also include the justification for the need to have a permit for a weapon.

In the event of a negative decision in which experts state that the state of health of the applicant for a gun permit prevents obtaining it, they inform the appropriate police authority. However, it should be noted that a party may appeal against such a judgment, which must be submitted in writing. Pursuant to the regulation of Art. 15h, item 2 of the Act on arms and ammunition, the appeal is entitled to the applicant and the voivodship police chief competent for the person's place of residence. An appeal and justification must be lodged within 30 days of the date of delivery of the decision, through the physician or psychologist who issued the decision, to one of the appeal entities, which are:

- voivodship occupational medicine centers, and if the appeal relates to a medical certificate issued in a voivodship occupational medicine center – research institutes in the field of occupational medicine,
- units of the occupational medicine service for medical entities established and appointed by the minister competent for internal affairs,
- medical entities established and designated by the Minister of National Defense.

An appeal against a decision is lodged via a doctor or psychologist to the competent authority, which then passes the appeal together with the examination documentation to the appeal entity within 7 days of receiving the appeal. Examination under the appeal procedure is carried out within 30 days of receipt of the appeal. It is worth pointing out that the deadline specified in Art. 15h, item 5 of the Act of 1999 on weapons and ammunition for testing within 30 days from the date of receipt of the appeal, is not a deadline, but an instructional one, because only the deadlines are considered to be the first appeals or deadlines that the act deems it to be¹⁹. According to Art. 15h, item 7 of the Act on weapons and ammunition, a medical or psychological certificate issued in the course of an appeal is final. Submission of subsequent judgments is unnecessary and cannot be considered as substantive evidence in the case²⁰. Pursuant to Art. 15a, item 1 of the Act, there is an obligation to undergo medical and psychological examinations under the appeal procedure. Failure to comply with this obligation must result in the issuing of a negative decision on the issue of a weapon license. As emphasized by the administrative court, in the case of proceedings initiated upon a request, the party bears the burden of demonstrating the facts from which it derives

¹⁹ Judgment of the Provincial Administrative Court in Warsaw of 26 January 2018, II SA/Wa 538/17, Lex No. 2452171.

²⁰ Judgment of the Provincial Administrative Court in Warsaw of 28 February 2018, II SA/Wa 1449/17, Lex No. 2477133.

certain legal effects. In the proceedings for issuing a permit for a weapon, the person applying for a permit is obliged to submit to the rigors arising from the act of 1999 on weapons and ammunition, in particular, to appear at the summons of an authorized entity to conduct tests and demonstrate that it is not to the persons mentioned in Art. 15, item 1, points 2–4 of the Act²¹.

After submitting the application together with a medical and psychological certificate, as well as after passing the examination, the competent Police authority makes the decision on issuing or refusing to issue a permit authorizing the possession of a weapon, specifying its type. The permit for a weapon is issued by way of an administrative decision, which is one of the forms of administration activity. The administrative decision is therefore a qualified administrative act. Decides the matter as to the substance in whole or in part or otherwise terminates the proceedings in the instance. The procedure is issued, the criteria of correctness and defectiveness and legal effects of the defectiveness are regulated in detail by law²². The decision may order, prohibit or allow a specific action or tolerate it, but its essence is always the act of choosing at least between two variants. It should be emphasized that the decision decides on specific interests²³. The Supreme Administrative Court in a resolution composed of seven judges stated that the decision is considered to be a unilateral decision of the administrative body on the binding consequences of the applicable administrative law norm for an individually specified entity and specific case, undertaken in the sphere of external relations, outside the system of state organs and their subordinate units²⁴. The decision to permit or refuse a weapon permit is issued on the basis of the provisions of the Code of Administrative Procedure, therefore it contains the basic elements indicated in Art. 107, § 1 of the Code of Administrative Procedure²⁵, however, special provisions may also specify other components that should con-

²¹ Judgment of the Provincial Administrative Court in Warsaw of 29 May 2017, II SA/Wa 1885/16, Lex No. 2321413.

²² E. Ura, *Prawo administracyjne*, p. 128.

²³ E. Knosala, *Decyzja w działaniu administracji publicznej*, „*Studia Iuridica*” 1996, No. 32, p. 140.

²⁴ Resolution of the Supreme Administrative Court of 12 October 1998, OPS 6/98, ONSA 1999, No. 1, Item 3.

²⁵ These elements are: a) the designation of a public administration body; b) date of issue; c) designation of the page or pages; d) reference to the legal basis; e) settlement; f) factual and legal justification; g) an instruction as to whether and in what manner an appeal may be lodged against it and about the right to waive the appeal and the consequences of waiving the appeal; h) signature providing the name and job title of the employee of the body authorized to issue the decision, and if the decision was issued in the form of an electronic document – a qualified electronic signature; i) in the case of a decision in respect of which an action may be brought before a common court, an objection to a decision or a complaint to an administrative court – an instruction on the admissibility of bringing an action, an objection to a decision or a complaint and the amount of the fee for an action or an entry on a complaint or an objection from decisions, if they are permanent, or on the basis of calculating a fee or entry of a relative nature, as well as the possibility of a party seeking exemption from costs or granting the right to assistance.

tain the decision (Art. 107, § 2 of the Code of Administrative Procedure). Such a special provision is Art. 12(2) of the Law on Weapons and Ammunition, which requires to specify in the permit 1) the purpose for which the permit was issued, 2) the type of weapon; 3) the number of copies of weapons.

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Summary

The legal form of the administration's operation is the type of specific activity specified by law, which may be used by the administrative body to settle a specific matter. It is equivalent to the concept of legal action under civil law. One form of administration is the issuing of administrative acts, and the most common and typical form of an administrative act is an administrative decision. This legal form is the issuing or refusal of issuing a weapon license to a police officer.

Keywords: decision, weapon, weapon license, types of weapons

DECYZJA JAKO FORMA PRAWNA WYDANIA POZWOLENIA NA BROŃ FUNKCJONARIUSZOWI POLICJI

Streszczenie

Prawną formą działania administracji jest określony przepisami prawa rodzaj konkretnej czynności, który może być wykorzystany przez organ administracji do załatwienia określonej sprawy. Jest to odpowiednik pojęcia czynności prawnej na gruncie prawa cywilnego. Jedną z form działania administracji jest wydawanie aktów administracyjnych, a najbardziej rozpowszechnioną i typową formą aktu administracyjnego jest decyzja administracyjna. Taką formę prawną przybiera wydawanie lub odmowa wydawania pozwolenia na broń funkcjonariuszowi Policji.

Słowa kluczowe: decyzja, broń, wydawanie pozwolenia na broń, rodzaje broni