

Mirośław Karpiuk*

The legal grounds for revoking weapons licences

Abstract

Firearms, ammunition, incapacitating sprays, and certain tools and devices with the potential to pose a risk to health or life, may only be possessed with a weapons licence issued by a competent authority. Firearms licences are both issued and revoked as administrative decisions. A revocation decision must meet the general requirements for this type of administrative act, and also specify the applicable legal grounds. When a negative decision is issued, resulting in a right being taken away (such as firearms licence revocation), special consideration should be given to the grounds, making it clear why the authority chose to take such a decision. Pursuant to the generally applicable administrative procedure laws, a statement of factual grounds should, in particular, specify the facts the court considered proven, including the underlying evidence, provide the reasons why the court dismissed other evidence as implausible, and inconclusive, and state the legal reasons for the decision, including references to the relevant laws.

Key words: safety, public order, Police, administrative decision, medical certificate, ammunition

* Dr hab. Mirośław Karpiuk, Professor of the University of Warmia and Mazury in Olsztyn, Faculty of Law and Administration, University of Warmia and Mazury in Olsztyn, e-mail: miroslaw.karpiuk@uwm.edu.pl, ORCID: 0000-0001-7012-8999.

The law stipulates clearly that firearms and ammunition may only be possessed with a weapons licence issued by a Provincial Police Chief in charge of the area in which the interested person resides, or in which the interested entity has its registered office. In the case of professional soldiers, the licence is issued on the basis of a permit issued by a competent Provost Marshal¹.

To recapitulate, the authorities with the power to issue a weapons licence are the Provincial Police Chief, and, for professional soldiers, the Provost Marshal.

Within a province (voivodeship), the government administration authority in charge of protecting the population and maintaining public safety and order is the Provincial Police Chief, acting in his or her own name in matters involving the issue of individual administrative acts².

Military Police Divisions are field organisational units of the Military Police³. They are headed by Provost Marshals.

The firearms types listed under Article 4 (1) (1) of the FAA include assault, hunting, sporting, gas, signal, and alarm weapons⁴; under Article 4 (1) (3) of the FAA ammunition is defined as bullets intended for firearms.

Article 4 (1) (1) of the FAA provides an incomplete, ostensive, definition of firearms. The definition is incomplete because it does not provide a comprehensive list of all the devices described as firearms, including only, as an example (as the expression “including” suggests), gas pistols. Hence, firearms may include devices other than assault, hunting, sporting, gas, signal, and alarm weapons. These may be any non-standard devices which are more than likely to emerge as weapons technology continues to develop at an ever-growing pace, and these weapons will satisfy the criteria set out in the definition provided by Article 7 of the FAA, despite not being assault, hunting, sporting, gas, alarm, or signal weapons. Evidently, then, Article 7 of the FAA sets out a well-considered definition of firearms, specifying all the distinctive

1 Art. 9 ust. 1 ustawy z dnia 21 maja 1999 r. o broni i amunicji (t.j. Dz.U. z 2019 r., poz. 284. ze zm.), further referred to as „the FAA”.

2 Art. 6 ust. 1 pkt 1 ustawy z dnia 6 kwietnia 1990 r. o Policji (t.j. Dz.U. z 2019 r., poz. 161 ze zm.).

3 Art. 7 ust. 2 pkt 1 ustawy z dnia 24 sierpnia 2001 r. o Żandarmerii Wojskowej i wojskowych organach porządkowych (t.j. Dz.U. z 2019 r., poz. 518 ze zm.).

4 Since the relevant legislation uses simultaneously two firearms terms (assault and hunting), and given that a synonymous interpretation is prohibited, these two terms may not be given the same meaning, wyrok NSA z dnia 6 marca 2014 r., II OSK 2406/12, LEX nr 1495283.

features which all the elements of the set of devices described as firearms must have, and not only the ones listed as examples in the scope-based definition adopted in Article 4 (1) (1) of the FAA. Therefore, firearms are all the devices considered as such under Article 4 (1) (1) of the FAA, as well as such unnamed devices as might emerge in the future⁵.

As defined by Article 7 of the FAA, a firearm is a portable barrelled weapon which expels, or is designed to expel, or can be converted to expel, one or more bullets or substances by the action of a propellant, with the caveat that any object which is easily convertible for expulsion purposes may be considered as adaptable for expelling one or more bullets or substances by the action of a propellant. A signal weapon is a multiple-use device which, through the combustion of a propellant, can fire a pyrotechnic charge from a barrel with a calibre of at least 25 mm, to produce a visual or acoustic effect. An alarm weapon is a multiple-use device which produces an acoustic effect through the action of compressed gases generated by the combustion of a propellant, and the substance fired from the barrel or a substitute thereof has a range of no more than 1 metre. By extension, a firearm is any object or device which meets the requirements laid down in Article 7 (1-3) of the FAA. It is of no relevance how the device was made, or whether originally manufactured or improvised. When comparing the features of individual firearms devices, it becomes evident that they share a mode of action based on compressed gases produced by the combustion of a propellant⁶.

Under Article 4 of the FAA a weapon may be understood not only as a firearm, but also as 2) a pneumatic weapon; 3) an incapacitating spray; 4) any tools and devices with the potential to pose a risk to health or life: a) a cold weapon in the form of: blades concealed in objects which do not have the appearance of a weapon, knuckledusters and nunchuks, clubs with the end made of a heavy and hard material, or containing an inlay made of such material, clubs made of wood or other heavy and hard material as baseball bat imitations; b) bowstring weapons in the form of crossbows; c) electric incapacitation devices.

In accordance with Article 9 (3) of the FAA, incapacitating sprays and the tools and devices listed in the said law (cold weapons, bowstring weapons in

5 Postanowienie SN z dnia 22 stycznia 2003 r., I KZP 40/02, OSNKW 2003, nr 1-2, poz. 11.

6 S. Maj, *Komentarz do art. 7 [w:] S. Maj, Ustawa o broni i amunicji. Komentarz*, LEX 2010.

the form of crossbows, and electric incapacitation devices) may be possessed with a weapons licence issued by a Provincial Police Chief in charge of the area in which the interested person resides, or in which the interested entity has its registered office. In the case of professional soldiers, the licence is issued on the basis of a permit issued by a competent Provost Marshal.

Mandatory licensing does not apply to pneumatic weapons, as the only requirement applicable to them under Article 9 (4) of the FAA is to hold a pneumatic-weapon registration card.

However, pursuant to Article 11 of the FAA, the licence rule is subject to certain exceptions. These include cases in which: 1) weapons are part of museum collections under separate legislation; 2) weapons are used for sporting, training, or recreational purposes on a shooting range issued with an operating licence by a competent authority; 3) signal and alarm firearms are used to call for help, or conduct search and rescue operations, and where used by the licensee to signal the start of a sporting competition, if needed; 4) weapons and ammunition are possessed by businesses selling weapons under applicable permissions, or supplying gunsmith services pursuant to separate legislation, provided that such services are directly part of the business activity; 5) a particular possessed weapon has been submitted for deactivation or confirmation of deactivation; 6) the possessed firearm has been deactivated; 7) the possessed weapon is an electric incapacitation device with an average current intensity output of no more than 10mA; 8) the possessed weapon is a hand-held incapacitating spray; 9) the possessed weapon is a pneumatic weapon; 10) the possessed weapon is a muzzle-loading firearm made before 1885, or a replica thereof; 11) the possessed weapon is an alarm weapon with a calibre of 6 mm. Since the catalogue of exceptions set out in Article 11 of the FAA is closed, a weapons licence will be required in all cases other than those described in that provision.

Any possessed weapon in violation of the FAA requirements, i.e. without the mandatory licence, thus rendering it impossible for the relevant authorities to supervise whether it is properly used and stored, represents a threat to public order⁷. Public order involves the maintenance of legal and public order⁸

7 Wyrok WSA z dnia 16 października 2007 r., VI SA/Wa 1502/07, LEX nr 399259.

8 M. Karpiuk, *Activities of the local government units in the scope of telecommunication*, „Cybersecurity and Law” 2019, vol. 1, p. 45. For more on public order, also see: M. Karpiuk, *Position of the Local Government of Commune Level in the Space of Security and Public Order*, „Studia Iuridica Lublinensia” 2019, nr 2, s. 32; M. Karpiuk, K. Prokop, P. Sobczyk,

(a certain organised system of entities, tools and rules), and as such it determines whether or not a weapons licence may be issued. This type of administrative control (exercised through the requirement to obtain permission from a competent authority) prevents individuals who could disrupt the public from using weapons legally.

The conditions for revoking weapons licences are set out in Article 18 of the FAA. In accordance with Article 18 (1) of the FAA, a competent Police authority may revoke a weapons licence if the person issued with such a licence: 1) fails to meet the conditions laid down in the weapons licence; 2) is one of the persons referred to in Article 15 (1) (2-6) of the FAA; 3) fails to report the loss of his or her weapon; 4) is moving or carrying an unloaded weapon when under the influence of alcohol, a psychoactive substance or psychotropic drug, or a substitute drug.

Pursuant to Article 10 (7) of the FAA, a competent Police authority (a Provincial Police Chief or a District [Poviat] Police Chief) may decide that a specific licence restricts the use of a weapon or prohibits the holder from carrying it, in which case an appropriate note is included in the weapon-holder's ID card. If the holder of a licence involving such a restriction fails to comply with it, the Police authority may revoke the licence pursuant to Article 18 (1) (1) of the FAA. The law stipulates clearly that in such circumstances the weapons licence *is*, not *may be*, revoked, and the competent authority acts accordingly.

The individuals referred to in Article 15 (1) (2-6) of the FAA must have their weapons licences revoked. These include individuals: 1) with mental disorders⁹

Ograniczenie korzystania z wolności i praw człowieka i obywatela ze względu na bezpieczeństwo państwa i porządek publiczny, Siedlce 2017, s. 14–21; K. Chałubińska-Jentkiewicz, *Moralność publiczna w polskim prawie gospodarczym i w prawie mediów* [w:] G. Blicharz, M. Delijewski (red.), *Klauzule porządku publicznego i moralności publicznej*, Warszawa 2019, s. 244–245; M. Karpiuk, N. Szczęch, *Bezpieczeństwo narodowe i międzynarodowe*, Olsztyn 2017, s. 96–102; A. Pieczywok, *Profesjonalność funkcjonariuszy wybranych służb w obszarze bezpieczeństwa i porządku publicznego* [w:] M. Karpiuk, A. Pieczywok (red.), *Służba w formacjach bezpieczeństwa i porządku publicznego*, Warszawa 2016, s. 10; M. Karpiuk, *Ograniczenie wolności uzewnętrzniania wyznania ze względu na bezpieczeństwo państwa i porządek publiczny*, „Przegląd Prawa Wyznaniowego” 2017, t. 9, p. 11.

⁹ A mentally disturbed individual is a person who 1) is mentally ill (suffering from psychotic disorders); 2) is intellectually disabled; 3) or exhibits other mental disturbances recognised by state-of-the-art medicine as mental disorders, and requires healthcare services or other forms of assistance and care essential for them to function in their family and social environments, art. 3 pkt 1 ustawy z dnia 19 sierpnia 1994 r. o ochronie zdrowia psychicznego (t.j. Dz.U. z 2018 r., poz. 1878 ze zm.). Under the applicable law a person

or substantial psychophysical limitations; 2) with serious psychological dysfunctions; 3) addicted to alcohol or psychoactive substances; 4) having no permanent place of residence on the territory of the Republic of Poland; 5) representing a threat to themselves, or to public order or security¹⁰: a) lawfully convicted of an intentional crime¹¹ or a fiscal crime, b) lawfully convicted of an unintentional crime against life and health, and against traffic safety, when under the influence of alcohol or a psychoactive substance, or guilty of a hit-and-run accident.

A final medical or psychological certificate is binding on Police authorities as they determine the factual and legal grounds for licence revocation. Once the administrative procedure is pending before the Police authorities, such certificates are no longer subject to review. This means that the relevant administrative decision is binding, as the law does not provide Police authorities with the right to choose the manner in which they settle the matter. A final medical or psychological certificate may, then, effectively preclude the possession of a licensed weapon¹².

A decision to revoke a weapons licence is not a penal, but an administrative, measure. Indeed, under the law the very fact of having been legally convicted of an intentional crime or fiscal crime represents a valid legal ground to

exhibiting other mental disturbances may be considered a mentally disturbed individual on the condition that such disturbances affect the functioning of that individual to the degree that they require health services (e.g. outpatient psychiatric or psychological care, inpatient or day psychiatric treatment) or other forms of assistance (occupational therapy, social assistance, nursing or social care, psychiatric rehabilitation, community integration) in order to be able to function in their families and communities, K. Bobińska, P. Gałeczki, *Komentarz do art. 3 [w:] K. Bobińska, K.Z. Eichstaedt, P. Gałeczki, Ustawa o ochronie zdrowia psychicznego. Komentarz*, LEX 2016. Instead of „mental disease”, the currently preferred term is „mental disorder”. The latter encompasses all disorders involving psychotic symptoms: hallucinations, delusions, severe mood and emotional disorders, postanowienie SA w Krakowie z dnia 14 marca 2016 r., II AKz 53/16, LEX nr 2229232.

¹⁰ It is not necessary for the „threat to themselves, or to public order or security” to exist jointly to be considered a legal ground, as each of such threats individually can represent a separate legal ground for weapons licence revocation, wyrok WSA z dnia 18 kwietnia 2018 r., II SA/Wa 1728/16, LEX nr 2522178.

¹¹ Each conviction of an intentional crime is penalised with a weapons licence revocation ruling, wyrok NSA z dnia 19 stycznia 2018 r., II OSK 781/16, LEX nr 2442801. Where a weapons licence holder has been lawfully convicted of any intentional crime, it is reasonable to assume by default that such legal grounds exist to deem such a person as representing a threat to themselves, or to public order or security, resulting in a mandatory decision to revoke the weapons licence, wyrok WSA z dnia 16 maja 2017 r., II SA/OI 1391/16, LEX nr 2315183.

¹² Wyrok WSA z dnia 28 lutego 2018 r., II SA/Wa 1448/17, LEX nr 2469185.

revoke a weapons licence. By committing such unlawful acts, the individual creates reasonable doubt as to his or her capacity for possessing a weapon. Due to their potential to pose a threat to human life or health, weapons and ammunition must be controlled, and access to them must be restricted to emotionally stable, law-abiding, even-tempered, and mature individuals. Hence, the laws under which people may possess weapons and ammunition must be interpreted as rigorously as possible¹³.

Under Article 25 of the FAA a weapons licence is revoked in the case of failure to comply with the obligation to report the loss of the weapon. In accordance with this provision, where a weapon is lost, the individual who possessed it is required to report the loss immediately, within 24 hours at the latest, to the Police or Military Police.

The time limit referred to in Article 25 of the FAA runs from the time the individual becomes aware that the weapon has been lost¹⁴. However, considering how important it is to quickly report that the weapon has been lost in order to recover the weapon and, consequently, to prevent its use to breach public order or security, and, given the unique nature of having a weapons licence, which, as a rule, should be issued to persons who are aware of the risks associated with the improper storage, carrying or use of weapons, it should be assumed that the time limit under Article 25 of the FAA runs not only from the time the individual actually becomes aware that they have lost his or her weapon, but also from the time he or she *should have* become aware of such a loss, had due care been exercised as required from individuals given a right as special as a weapons licence¹⁵.

It is the obligation of every weapon holder to report the loss of the weapon immediately to the Police or Military Police, with the caveat that in this specific situation “immediately” means no more than 24 hours from the time of becoming aware of the loss of the weapon. The loss of a weapon should be understood as losing control over it and not knowing where, and in whose possession, it is. The circumstances in which the weapon was lost are irrelevant. A lost weapon report should be submitted to the closest Police or

13 Wyrok WSA z dnia 19 lipca 2017 r., II SA/Wa 218/17, LEX nr 2354933.

14 Wyrok WSA z dnia 26 sierpnia 2016 r., II SA/Wa 95/16, Legalis nr 1513770.

15 Wyrok NSA z dnia 5 grudnia 2012 r., II OSK 1419/11, Legalis nr 817178.

Military Police unit, regardless of whether it issued the licence for the weapon. What matters is that the search for the weapon starts as quickly as possible¹⁶.

In addition to the mandatory legal grounds for weapons licence revocation, where the authority may not use its administrative discretion, the law provides for optional grounds on which the authority may or may not make a decision. Pursuant to Article 18 (4) of the FAA, a competent Police authority may revoke a weapons licence where the factual circumstances underlying its issue have ceased to exist. In such a case the authority may, but is not required to, revoke the weapons licence.

A weapons licence may also be revoked under Article 18 (5) of the FAA. In accordance with this provision, a competent Police authority may revoke a weapons licence where the holder of the licence is found to be in breach of: 1) the obligation to register the weapon within 5 days from its purchase; 2) the obligation to undergo medical and psychological examinations, and to provide medical and psychological certificates confirming that they have no mental disorders, substantial psychophysical limitations or serious psychological dysfunctions, or that they are not addicted to alcohol or psychoactive substances, and that they are capable of possessing and using the weapon; 3) the obligation to notify a competent Police authority of a change to the permanent place of residence; 4) the rules for storing, carrying, and keeping a record of weapons and ammunition; 5) the requirement to obtain a permit to export weapons and ammunition; 6) the rule under which any firearm or other weapon capable of hitting a target from a certain distance may only be used for training and sporting purposes at shooting ranges; 7) the prohibition from lending the weapon to unauthorised persons.

A person whose weapons licence has been revoked is required to return the documents confirming the legal possession of the weapon and ammunition to a competent Police authority within 7 days from the date of the final decision to revoke the weapons licence. This requirement is stipulated in Article 18 (8) of the FAA.

Such a regulation allowing weapons licence revocation is typical for administrative law. The approach adopted here by the legislators is typical for public law, allowing public authorities to influence the addressees of the legal

¹⁶ B. Kurzępa, *Komentarz do art. 25 [w:] B. Kurzępa, Ustawa o broni i amunicji. Komentarz*, Legalis 2010.

norms they adopt, and to enforce these norms¹⁷. Non-conformance with the rules established by the FAA with regard to the legal possession of weapons leads to, or can lead to, licence revocation.

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¹⁷ I. Hoffman, *Jedynie teoretyczna możliwość wprowadzenia katastralnego systemu opodatkowania nieruchomości – uregulowania w zakresie podatków od nieruchomości na Węgrzech*, „Analizy i Studia” 2019, nr 2, s. 75.

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Wyrok WSA z dnia 28 lutego 2018 r., II SA/Wa 1448/17, LEX nr 2469185.

Przesłanki cofnięcia pozwolenia na broń

Streszczenie

Broń palną i amunicję do tej broni, miotacze gazu obojętniającego oraz narzędzia i urządzenia, których używanie może zagrażać życiu lub zdrowiu, można posiadać na podstawie pozwolenia na broń wydanego przez właściwy organ. Pozwolenie na broń wydaje się w formie decyzji administracyjnej. W tej formie również organ cofa pozwolenie. Decyzja w sprawie cofnięcia pozwolenia na broń musi spełniać wymogi ogólne stawiane tego rodzaju aktom administracyjnym, a także dokładnie wskazywać, która z przesłanek znalazła zastosowanie w sprawie. Szczególne znaczenie w przypadku decyzji negatywnej, odbierającej określone uprawnienie (a taką jest cofnięcie pozwolenia na broń) będzie miało uzasadnienie, z którego powinno jasno wynikać, dlaczego organ podjął właśnie takie rozstrzygnięcie. Uzasadnienie faktyczne, w myśl ogólnych, administracyjnych przepisów procesowych, powinno w szczególności zawierać wskazanie faktów, które organ uznał za udowodnione, dowodów, na których się oparł, oraz przyczyn, z powodu których innym dowodom odmówił wiarygodności i mocy dowodowej, a uzasadnienie prawne – wyjaśnienie podstawy prawnej decyzji, z przytoczeniem przepisów prawa.

Słowa kluczowe: bezpieczeństwo, porządek publiczny, Policja, decyzja administracyjna, orzeczenie lekarskie, amunicja