

ARTICLE

Legal aspect of prohibition on taking up gainful employment and conducting business activities by a professional soldier

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Abstract

The employment relationship of a professional soldier distinguishes him from persons working under an employment contract not only by numerous rights, but also by numerous restrictions. Professional military service requires availability and is characterised, among other things, by subordination in the service. One of the restrictions is also refraining from taking up additional gainful employment outside of service without the permission of the commander of the military unit in which the soldier serves. This article aims to analyse the regulations related to taking up paid employment and conducting business activity by professional soldiers. This institution is defined in Article 335 of the *Act of 11 March 2022 on the defence of the Homeland* and in the *Regulation of the Minister of National Defence of 13 June 2023 on the performance of paid employment or conducting business activity by professional soldiers*. The author compared the applicable regulations in this regard with the *Act of 11 September 2003 on the military service of professional soldiers*. He then answered the research question whether the Act on the defence of the Homeland and related implementing regulations adequately regulate the discussed issues? In the analysis of legal

acts, the author used a formal-dogmatic method supplemented by a theoretical-legal method. In summary, he pointed out provisions which, in his opinion, require clarification of supplementation.

Keywords Armed Forces, employment relationship, additional gainful employment

Introduction

The possibility of performing additional paid work and conducting business activity by a professional soldier should be treated as an exception to the principle of complete dedication to professional military service, which stems from the function of the armed forces in the state. This is reflected in Article 65(1) in conjunction with Article 31(3) of the *Constitution of the Republic of Poland of 2 April 1997*. According to these provisions, everyone is guaranteed the freedom to choose and pursue a profession and to choose their place of work, and (...) *any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect of the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights*. It is therefore acceptable that there are certain categories of employees who are subject to greater restrictions due to the nature of their duties¹. These individuals include professional soldiers. In their case, restrictions on the exercise of constitutional freedoms result from the nature of their service and the specific characteristics of the army as an employer, which is based on hierarchical subordination, command and control, and single-person command². The ban on additional work is a consequence of conditions such as availability, political neutrality and the prestige of the service.

Pursuant to Article 335(1) of the *Act of 11 March 2022 on the defence of the Homeland* (hereinafter: the Act on the defence of the Homeland), professional

¹ P. Pakuła-Gawarecka, *Zakres przedmiotowy i podmiotowy zakazu podejmowania dodatkowych zajęć przez funkcjonariuszy Policji* (Eng. The scope and subject matter of the prohibition on police officers taking on additional work), "Roczniki Administracji i Prawa" 2015, no. 15(2), p. 282.

² M. Domżański, *Neutralność polityczna sił zbrojnych w wymiarze prawnokonstytucyjnym* (Eng. Political neutrality of the armed forces in legal and constitutional terms), "Wrocławskie Studia Polilogiczne" 2023, no. 32, p. 13. <https://doi.org/10.19195/1643-0328.32.1>.

soldiers are prohibited from taking up gainful employment and conducting business activities. A similar provision was contained in the previously applicable *Act of 11 September 2003 on the military service of professional soldiers* (hereinafter: the Military Service Act).

Gainful employment of a professional soldier

Work in the sense of providing services or producing goods does not directly lead to the accounting recognition of assets in the balance sheet of the entity providing the work, e.g. an employee. From their perspective, it is usually an exchange of time and skills for income (wages), which may or may not be converted into fixed or current assets. Only the wages received become current assets, i.e. cash or funds in a bank account. The moment when the assets arise is delayed in relation to the act of work itself (from the performance of the service to the receipt of payment). At the same time, it should be emphasised that not every action of a soldier that results in the receipt of income is treated as gainful employment.

For example, income-generating work does not include gains resulting from the disposal of one's assets, such as opening savings accounts and other forms provided for by banking law, which are aimed at achieving financial benefits. Although the main purpose of such activities is to generate income, they should be treated as a form of investment of cash assets. In other words, the income in this case is not related to the soldier's activities, but arises from entrusting a certain amount of money to a financial institution in exchange for receiving income.

The definition of the term 'employment' appears in Article 2 point 51 of the *Act of 20 March 2025 on the labour market and employment services*. It states that this is (...) *the performance of work on the basis of an employment relationship, a service relationship or a contract for outwork*. In case law the term 'gainful employment' is understood as all forms of employment connected with earning income, i.e. economic activity, an employment relationship, a service relationship and any type of civil law contract, as well as membership in the statutory bodies of any institution, if this is connected with earning regular or periodic monetary income. Gainful employment also includes performing work for remuneration without signing a contract that would specify the terms and conditions of the activity performed³.

³ Ruling of the Provincial Administrative Court in Szczecin of 7 V 2008, ref. no. II SA/Sz 99/08, LEX No. 515274; ruling of the Provincial Administrative Court in Szczecin of 25 I 2017, ref. no. II SA/Sz 1395/16, LEX No. 2237739; ruling of the Provincial Administrative Court in Poznań of 8 X 2015, ref. no. IV SA/Po 467/15, LEX No. 1933084.

An essential element in classifying the activities performed by a soldier as gainful employment is that he receives remuneration or cash benefits for the work performed. The guarantees resulting from the employee's right to fair remuneration are the norm in this regard. This concept appears in international legal acts, including: the Universal Declaration of Human Rights of 1948 (Article 23)⁴, the International Covenant on Economic, Social and Cultural Rights of 1966 (Article 7)⁵, the European Social Charter of 1961 (Article 4)⁶ and the conventions of the International Labour Organisation⁷. As a rule, in the case of an employment relationship, the employer has the right to use the work performed by the employee in exchange for which they are obliged to pay them remuneration (Article 22 § 1 of the *Act of 26 June 1974 – Labour Code*). Remuneration for work includes all benefits, both monetary and non-monetary, received by the employee from the employer on account of being in an employment relationship. The Labour Code stipulates that an employment relationship is remunerated, which distinguishes it from civil law relationships⁸, e.g. contracts for specific work or contracts of mandate. Benefits in this respect are civil law benefits and are therefore not subject to the rigours and protection provided for by labour law⁹.

Business activity of a professional soldier

Pursuant to Article 3 of the *Act of 6 March 2018 – Entrepreneurs' Law* (hereinafter: *Entrepreneurs' Law Act*), economic activity is defined as organised gainful activity performed on one's own behalf and on a continuous basis. The Supreme Court stated in one of its resolutions that (...) *economic activity is an activity of a professional,*

⁴ *Universal Declaration of Human Rights*, Paris, 10 XII 1948, <https://libr.sejm.gov.pl/tek01/txt/onz/1948.html> [accessed: 1 VII 2025].

⁵ *International Covenant on Economic, Social and Cultural Rights, opened for signature in New York on 19 December 1966*.

⁶ *European Social Charter drawn up in Turin on 18 October 1961*.

⁷ K. Prokop, *Konstytucyjne prawo do godziwego wynagrodzenia za pracę* (Eng. The constitutional right to fair remuneration for work), "Białostockie Studia Prawnicze" 2021, vol. 26, no. 2, p. 120. <https://doi.org/10.15290/bsp.2021.26.02.08>.

⁸ M. Liskowski, *Pojęcie wynagrodzenia za pracę w Kodeksie pracy* (Eng. The concept of remuneration for work in the Labour Code), "Pracownik i Pracodawca" 2016, no. 2, p. 35. <https://doi.org/10.12775/PiP.2016.012>; see also: E. Beck-Krala, *Wynagrodzenie pracowników w organizacji. Teoria i praktyka* (Eng. Employee remuneration in an organisation. Theory and practice), Kraków 2013.

⁹ A. Górnicz-Mulcahy, „Własność” wynagrodzenia za pracę (Eng. 'Ownership' of remuneration for work), in: *Własność w prawie i gospodarce*, U. Kalina-Prasznic (ed.), Wrocław 2017, p. 162.

*and therefore permanent, nature, subject to the rules of profitability and profit or the principle of rational management, acting on one's own account and participating in economic turnover*¹⁰.

The organised nature of economic activity means that the chosen type of activity is incorporated into a formal organisational framework, which (...) *means, for example, establishing a specific legal form, setting up a registered office, organising an office or other premises for conducting business, employing staff and establishing internal legal regulations*¹¹. The view has become established in case law that, when assessing whether a business activity is being conducted, characteristics such as continuity and organisation should be taken into account, regardless of whether the entity is actually registered. These characteristics of the activity are an objective category, independent of how the entity performing the activity assesses it¹².

Another feature that distinguishes economic activity from other activities is its profit-making nature. *An activity is considered to be profit-making if it is conducted for the purpose of generating income (profit) understood as the surplus of revenue over costs incurred. Activities that do not have this aspect are considered to be charitable, social, cultural or other activities (referred to as non-profit activities)*¹³.

Economic activity is to be carried out on one's own behalf, i.e. independently, at one's own risk and on one's own responsibility. A natural person who conducts business activity independently and separately from other entities may be considered a separate economic entity¹⁴.

The last condition for classifying an activity as economic activity is its continuity. *Therefore, only those who perform repetitive activities in such a way that they form a coherent whole, rather than isolated services or specific goods or services, will be considered entrepreneurs. If such activities are of an economic or professional nature, there are grounds for considering the entity undertaking them to be an entrepreneur*¹⁵. Occasional activity is not a business activity¹⁶. The line between sporadic activities and planned (organised) but intermittent business activities in Poland is based

¹⁰ Resolution of the Supreme Court of 23 II 2005, ref. no. III CZP 88/04, LEX No. 143136, pp. 5–6.

¹¹ Ruling of the Supreme Court of 6 IV 2017, ref. no. II UK 98/16, LEX No. 2307127.

¹² Ruling of the Provincial Administrative Court in Opole of 7 V 2008, ref. no. I SA/Op 18/08, LEX No. 484040.

¹³ Ruling of the Supreme Administrative Court of 26 IX 2008, ref. no. II FSK 789/07, LEX No. 495147. Cf. Ruling of the Provincial Administrative Court in Warsaw of 8 X 2004, ref. no. II SA 3673/03, LEX No. 159913.

¹⁴ Ruling of the Supreme Administrative Court of 1 X 1997, ref. no. II SA 1811/96, LEX No. 33310.

¹⁵ Decision of the Court of Appeal in Szczecin of 7 VIII 2006, ref. no. I ACz 441/06, LEX No. 279953.

¹⁶ Ruling of the Supreme Administrative Court of 17 IX 1997, ref. no. II SA 1089/96, LEX No. 31312.

on the definition of business activity (continuity, organisation, profit motive) and income limits for unregistered activities. To maintain continuity, it is sufficient that the overall circumstances indicate an intention to repeat a specific set of activities in order to earn income. This should be a permanent, planned (purposeful) activity, regardless of whether the plan covers a longer or shorter period. However, it is not required to conduct the activity without interruption¹⁷.

In order for a specific activity to be considered a business activity, the specified conditions (organised, continuous activity conducted on one's own behalf and for profit) must be met cumulatively. The absence of any one of these conditions means that the activity in question cannot be classified as a business activity.

Other forms of gainful employment for professional soldiers

In the context of the issue under analysis, the question of unregistered activity regulated in Article 5 of the Entrepreneurs' Law Act is interesting. Unregistered activity is defined by three conditions:

- 1) subjective, which refers to the fact that the activity is performed by a natural person;
- 2) income-based, based on the proviso that the income due from this activity does not exceed 225% of the minimum wage referred to in the *Act of 10 October 2002 on the minimum wage*;
- 3) formal, i.e. demonstrating that the entity performing such activity has not performed any economic activity in the last 60 months.

Unregistered activity is not formally considered economic activity, but it is gainful activity, performed personally, and may violate the conditions specified in Article 335(3) of the Act on the defence of the Homeland, e.g. interfere with the performance of official duties or violate the prestige of a professional soldier. Therefore, even in the case of unregistered activity, although the regulations do not require the commander's consent, the soldier must take into account the restrictions resulting from the aforementioned article. At the same time, it should be remembered that, pursuant to Article 5(3) of the Entrepreneurs' Law Act, if in a given quarter the income exceeds 225% of the minimum wage, unregistered activity becomes, by law, economic activity from the date on which this amount was exceeded. In such a situation, a professional soldier must obtain the consent of the commander of the military unit. Failure to do so constitutes a violation

¹⁷ Ruling of the Provincial Administrative Court in Wrocław of 27 IV 2005, ref. no. I SA/Wr 3237/03, LEX No. 496830.

of Article 335(1) of the Act on the defence of the Homeland, which may result in disciplinary proceedings or the withdrawal of consent for other forms of activity, if previously granted. If a soldier obtains consent to conduct economic activity, he or she may continue to perform activities that they have previously performed as unregistered activity.

Additional income of a professional soldier *de jure*

The legislator has provided for the possibility for a professional soldier to take up additional gainful employment and conduct business activity, provided that he submits a request for permission to do so to the commander of his military unit. According to the definition contained in the Article 2 of the Act on the defence of the Homeland, the commander of a military unit is a person who manages or commands a military unit in which a soldier holds a position or to which he has been assigned as part of his professional military service.

Detailed conditions and procedures for granting professional soldiers permits to perform gainful employment or conduct business activity, as well as the information to be included in a soldier's application for a permit to work or conduct business activity, are specified in the *Regulation of the Minister of National defence of 13 June 2023 on the performance of gainful employment or business activity by professional soldiers* (hereinafter: the Regulation on the performance of work). On the basis of the delegation contained in Article 56 of the Military Service Act, the *Regulation of the Minister of National Defence of 7 October 2009 on the performance of gainful employment or business activity by professional soldiers* was issued.

A professional soldier submits a written application for permission to perform gainful employment or conduct business activity exclusively on his own behalf through official channels. This means that this action cannot be taken by a representative appointed by the soldier, nor can it be carried out on behalf of or in the interest of a third party. The official channel means that the application is reviewed by each of the applicant soldier's superiors, so that the immediate superior, who has the most comprehensive knowledge of the soldier, can determine whether the subordinate's additional activity will interfere with his or her official duties¹⁸.

¹⁸ P. Gacek, *Dodatkowe zajęcia zarobkowe poza służbą (art. 62 ust. 1 ustawy o Policji) – wybrane zagadnienia proceduralne* (Eng. Additional gainful employment outside of service (Article 62(1) of the Police Act) – selected procedural issues), "Ius et Administratio" 2017, no. 1, p. 6.

It is worth noting that there is no legal basis for a military unit commander to decide on a professional soldier's request for permission to perform gainful employment by way of an administrative decision, i.e. under the provisions of the *Act of 14 June 1960 – Code of Administrative Procedure*. This matter is an internal matter arising from the chain of command and should be dealt with through official channels, rather than by means of an administrative decision. The decision of the commander of the military unit is not subject to appeal to a higher authority and, consequently, cannot be reviewed by way of a complaint lodged with an administrative court¹⁹. The decision concerning the settlement of a matter relating to the employment relationship of a professional soldier must be based on the applicable provision, and not on the Code of Administrative Procedures²⁰. The regulation on performance of work does not specify a deadline by which the procedure for granting or refusing permission to perform gainful employment or conduct business activity must be completed. However, it should be recognised that the commander of the military unit should make a decision before the date indicated by the soldier in the application as the date of commencement of work/business activity, with the proviso that the application must be submitted sufficiently in advance.

In § 3(2) point 1 of the regulation on the performance of work it was stated that in the case of gainful employment, the application shall include:

- a) the rank, first name and surname of the soldier,
- b) the name of the entity for which the gainful employment will be performed and the address of its registered office, or the first name and surname of the person for whom the gainful employment will be performed and that person's place of residence,
- c) the basis for the work performed (under an employment contract or on another basis),
- d) the place of work,
- e) the period for which the entity referred to in point b) intends to conclude an employment contract or a contract on another basis,
- f) the working time,
- g) the weekly duty schedule, including the determination of official duties within 40 hours in a 5-day working week,

¹⁹ Ruling of the Provincial Administrative Court in Bydgoszcz of 22 I 2013, ref. no. II SA/Bd 1012/12, LEX No. 1351366.

²⁰ Decision of the Supreme Administrative Court of 23 VIII 2012, ref. no. I OSK 1649/12, LEX No. 1331525; decision of the Supreme Administrative Court of 26 IV 2006, ref. no. I OSK 303/06, LEX No. 203585; decision of the Provincial Administrative Court in Poznań of 15 I 2010, ref. no. II SA/Po 882/09, LEX No. 635705; decision of the Provincial Administrative Court in Białystok of 19 III 2013, ref. no. II SA/Bk 171/13, LEX No. 1301609.

- h) the nature of the work performed,
- i) the start date of work.

In accordance with § 3(2) point 2 of the regulation on the performance of work, an application for consent to conduct business activity shall include:

- a) rank, first name and surname of the soldier,
- b) specification of the subject of the business activity, in accordance with the Polish Classification of Activities, and the address of the registered office or place of residence of the entity conducting the business activity,
- c) the address at which the business activity will be carried out,
- d) the legal form of the business activity,
- e) the amount of time necessary to carry out the business activity,
- f) the date of commencement of the business activity.

In accordance with § 3(2) point 3 of the regulation on the performance of work, together with the application, the soldier shall submit a mandatory statement that (...) *the business activity or activity of the entity for which the work will be performed does not concern products referred to in the provisions on the classification of defence products and supplies, construction works and services intended for military units.* Detailed rules for the codification of defence products are set out in *Decision No. 115/MON of the Minister of National Defence of 18 September 2024 on the Defence Products Codification System.* This regulation is subsequent to the Act. Neither the Military Service Act nor the Act on the defence of the Homeland provide for the possibility of conducting gainful activity related to defence products and supplies, construction works and services intended for military units. Nor was the soldier required to submit a declaration on this matter.

In Article 56(3) of the Military Service Act and in Article 335(3) of the Act on the defence of the Homeland, the legislator indicated that the commander of a military unit may allow a soldier to perform gainful employment or conduct business activity if:

- 1) it does not interfere with the soldier's performance of his official duties,
- 2) it contributes to improving their qualifications,
- 3) it does not undermine the prestige of a professional soldier,
- 4) the business activity or activity of the entity for which the work will be performed does not concern products referred to in the regulations on the classification of defence products and supplies, construction works and services intended for military units.

A soldier's additional work must therefore not adversely affect his availability, but should improve his qualifications. This is provided, for instance, by working as a lecturer or paramedic.

In one of the rulings of administrative courts based on the Military Service Act, a negative premise in the form of a violation of professional soldier's prestige was indicated:

The military service of a professional soldier, as the name suggests, is not a professional job [,] but a service characterised by discipline, loyalty and dedication. Professional soldiers are soldiers in active military service. Their length of service is determined by official duties that are difficult to predict and plan. They are sent to the most difficult areas to secure the independence of their homeland, but also to ensure the safety of citizens, with a readiness to sacrifice their lives. Their basic duties are defined by the Constitution of the Republic of Poland and the Act on the military service of professional soldiers. Therefore, it is not possible to agree with the complainant that his business activity does not interfere with his military service and that the status of a salesperson in a computer shop has the same prestige as that of a professional soldier²¹.

Pursuant to § 3(4) of the Regulation on the performance of work, the commander of a military unit may request the future employer of a soldier to provide (...) *information on the nature of the work to be performed by the soldier, the working time schedule applied and the possibility of performing official duties outside the permanent place of work, including outside the country, at the employer's request.*

When making a decision, the commander of a military unit must consider all the circumstances determining whether to grant consent, both positive and negative for the applicant. At the same time, he must remember that the most important thing is to secure the current activities of the military unit he commands²². The decision as to whether the type of gainful activity performed by a soldier conflicts with the performance of his official duties rests solely with the commander of the military unit²³.

²¹ Ruling of the Provincial Administrative Court in Gorzów Wielkopolski of 25 XI 2009, ref. no. II SA/Go 676/09, LEX No. 589116.

²² P. Palka, *Dodatkowa praca zarobkowa żołnierzy zawodowych (uwagi de lege lata)* (Eng. Additional gainful employment of professional soldiers (comments de lege lata)), "Wojskowy Przegląd Prawniczy" 2006, no. 2, p. 35; M. Czechowski, *Prawny charakter zatrudnienia żołnierzy zawodowych* (Eng. The legal nature of the employment of professional soldiers), Toruń 2016, pp. 224–227.

²³ Ruling of the Supreme Administrative Court of 9 II 2001, ref. no. II SA 3072/00, LEX No. 53672.

In the event of a breach of the conditions for obtaining consent, the commander of the military unit shall immediately revoke the permit to perform gainful employment or conduct business activity, ensuring a soldier the time necessary to terminate the employment contract or other contract on the basis of which the soldier performs gainful employment²⁴, or to terminate the business activity (§ 10 of the Regulation on the performance of work). This regulation specifies the conditions for refusing or revoking a permit to perform gainful employment or conduct business activity. The difference between the current regulation and the previous regulations is that the commander revokes the permit immediately, i.e. it is mandatory. The previous regulations indicated that the commander may revoke the permit, so it was a discretionary power.

In the case of gainful employment undertaken by a soldier under an employment contract or running a business, the commander of the military unit must give his consent regardless of the period for which the employment contract is concluded or the expected period of running the business. In the case of other types of contracts, e.g. a contract of mandate or a contract for specific work, the obligation to obtain consent will apply to contracts concluded for a period longer than one month.

Previous regulations did not require informing the commander of the military unit in which a soldier holds a position about the name of the entity for which the soldier performed paid work for a period not exceeding one month, within one month from the date of commencement of such work. Currently, it is not necessary to provide information about the type of work, remuneration and working hours – it is only mandatory to indicate the entity for which the soldier performed work.

It is worth noting that gainful employment cannot be performed by a professional soldier in another military unit, unless the soldier obtains the consent of the Minister of National Defence to take up such employment, with the exception of the employment at a military university as a lecturer conducting classes. In accordance with the definition included in Article 2 of the Act on the defence of the Homeland, a military unit should be understood as (...) *an organisational unit of the Armed Forces operating on the basis of a position assigned by the Minister of National Defence and using an official seal with the emblem of the Republic of Poland and the name (number) of the unit*. A professional soldier may not perform additional paid work in the military unit in which he or she serves.

In a situation where the gainful employment undertaken by a soldier is to be performed in another military unit, in accordance with § 4 of the Regulation on the performance of work, the soldier must submit an application (...) *to the Minister*

²⁴ Ruling of the Provincial Administrative Court in Warsaw of 14 IV 2008, ref. no. II SA/Wa 1842/07, LEX No. 480072.

of National Defence through the commander of the military unit in which he holds a position or to which he has been assigned as part of his professional military service. The commander shall forward the application, together with his opinion on it, to the Minister of National Defence via the head of the organisational unit of the Ministry of National Defence responsible for human resources. The minister's decision to grant or refuse consent is also communicated to the soldier by the commander. In addition, once the soldier has obtained permission to perform gainful employment or conduct business activity, the commander of the military unit may require him (...) to produce for inspection the employment contract or other contract on the basis of which the soldier performs gainful employment, or printouts from the register of entrepreneurs of the National Court Register or from the Central Register and Information on Economic Activity (§ 5 of the Regulation on the performance of work).

In the Military Service Act, additional gainful employment of a soldier in a military unit was regulated differently. In accordance with Article 56(3a) and (3b) of the aforementioned act, such work could not be performed by a professional soldier in the military unit in which he served or in a military unit directly subordinate to it, except where the work was undertaken in an entity that is not a budgetary entity, on a basis other than an employment contract. In the author's opinion, the current regulations in this matter are more transparent – the application must be submitted to the Minister of National Defence, whereas previously the decision to grant consent for additional work could be made by an authority which could also be the soldier's additional employer.

In accordance with § 9(1) of the Regulation on the performance of work:

In the event that a soldier who has been granted permission to perform gainful employment or conduct business activity is assigned to a position in another military unit or is transferred to another military unit as part of his professional military service, the soldier interested in continuing to perform gainful employment or conduct business activity shall submit a request to the commander of that military unit within 14 days from the date of assuming duties in the official position or the date of reporting to the military unit as part of performing professional military service at the disposal of the commander. Until the commander of the military unit or the Minister of National Defence issues a decision on this matter, the soldier shall perform work or conduct business activity on the basis of the existing permit.

As in the case of revocation of a permit to perform gainful employment or conduct business activity, the commander of the military unit shall ensure a soldier sufficient time to terminate the employment contract or other contract

on the basis of which the soldier performs gainful employment, or to terminate the business activity (§10(3) of the Regulation on the performance of work). The Military Service Act and the *Regulation of the Minister of National Defence of 7 October 2009 on the performance of gainful employment or business activity by professional soldiers* lacked regulations in this area. Undoubtedly, this change has a positive impact on the financial stability of soldiers. It is worth noting here that personnel movements in the Polish Armed Forces are very frequent, which is why this regulation takes on a particular practical dimension.

In accordance with § 6 of the Regulation on the performance of work:

1. A soldier who has obtained permission to perform gainful employment or conduct business activity shall immediately notify the commander of the military unit in writing of:
 - 1) not taking up gainful employment;
 - 2) interruption of gainful employment;
 - 3) termination of gainful employment;
 - 4) not taking up business activity;
 - 5) termination of business activity;
 - 6) suspension of business activity;
 - 7) resumption of business activity.
2. In the cases referred to in points 1–5, the commander of the military unit shall declare the expiry of the permit to perform gainful employment or conduct business activity.

The legislator has regulated the performance of paid work by professional soldiers for a period shorter than one month differently. In such a case, a professional soldier is obliged to provide the commander of the military unit in which he holds a position with information about the name of the entity for which he performed the work, within one month of the date of commencement of the work. Despite the formal lack of a requirement to obtain consent from the commander of the military unit, a professional soldier is not allowed to perform paid work for periods shorter than one month if it would interfere with the performance of their official duties, violate the prestige of the service, or if the work concerned products referred to in the regulations on the classification of defence products and supplies, construction works and services intended for military units.

It should be noted that, pursuant to Article 547 of the Act on the defence of the Homeland, in the event of mobilisation, martial law or war, Article 335 concerning the possibility of professional soldiers taking up additional paid work does not apply to them. This reflects the priority of the state's interests over the individual interests of soldiers, especially in times of emergency.

Pursuant to Article 353(1) of the Act on the defence of the Homeland: (...) *a breach of military discipline is an act committed by a soldier which damages the reputation or interests of the Armed Forces, culpable exceeding of powers or failure to perform duties arising from legal provisions, including orders and instructions issued by superiors authorised under those provisions.* On the other hand, Article 353(2) point 2 of the aforementioned Act stipulates that a violation of military discipline is, in particular: (...) *a failure to fulfil the duties of a soldier arising from the military oath taken, as well as from legal provisions, military regulations and the principles of military ethics.* In view of these regulations, it should be considered that taking up additional paid work or conducting business activity without the consent of the commander of a military unit is a disciplinary offence. It is worth quoting here the judgment of the Provincial Administrative Court in Lublin, which was issued on the basis of the Police Act, but the ruling will also apply to professional soldiers:

(...) pursuant to Article 62(1) of the Police Act, a police officer may not engage in gainful employment outside of service without the written consent of their superior, nor may they perform activities or tasks that are contrary to their duties under the Act or that undermine trust in the Police. Pursuant to Article 132(1) and (2) of the Police Act, a police officer is subject to disciplinary action for committing a disciplinary offence consisting in a breach of professional discipline or failure to comply with the rules of professional ethics. A breach of professional discipline is an act by a police officer consisting in the culpable exceeding of powers or failure to perform duties arising from legal provisions or orders and instructions issued by superiors authorised on the basis of these provisions²⁵.

The disciplinary standard is part of a broader set of regulations concerning the official status of professional soldiers and is a typical example of restrictions also known in other uniformed services, such as the Police, the Internal Security Agency or the Border Guard. Its purpose is, among other things, to eliminate conflicts of interest, minimise the risk of corruption and safeguard the operational capabilities of the armed forces.

Summary

When joining the professional military service, soldiers must be aware that they are giving up certain rights that they had as a civilian. This is due to the need for

²⁵ Ruling of the Provincial Administrative Court in Lublin of 25 X 2007, ref. no. III SA/Lu 422/07, LEX No. 492288.

high availability and the hierarchical structure of the army. One such restriction is the obligation for professional soldiers to refrain from taking up gainful employment outside of service without the written consent of the commander of the military unit. The legislator has provided for the possibility of obtaining such consent under certain conditions. The soldier must submit an official application containing the information listed in the Regulation on the performance of work. The legislator has also provided for the possibility of revoking consent, but only in cases specified in the Act on the defence of the Homeland. It is important to note that the provisions on administrative procedure will not apply to the procedure for granting, refusing or revoking consent.

The previous law on the military service also prohibited professional soldiers from taking up gainful employment or conducting business activities. The definition of gainful employment is the same in both acts, with the exception that the Act on the defence of the Homeland stipulates the need to inform the commander of the military unit about performing paid work for periods shorter than one month. As before, at the soldier's request, the unit commander may grant them permission to take up employment or conduct business activity if the conditions of no conflict with service, improvement of qualifications, no damage to prestige and no activity in the defence sector are met. The procedure for obtaining permission is identical in both regulations. Both the Act on the defence of the Homeland and the Military Service Act specify the application procedure and the assessment of the grounds for granting consent. Article 335 of the Act on the defence of the Homeland extends – in comparison with Article 56 of the Military Service Act – the control and restrictions on soldiers' gainful employment in other military units – it is not permitted unless the soldier obtains the consent of the Minister of National Defence. An exception is made for work as a lecturer at a military university. Undoubtedly, this exception is a form of strengthening the educational potential of the armed forces. In the author's opinion, there is no possibility of working in the military unit in which the soldier serves.

It should be noted that the provisions of the pragmatics and the executive act thereto in this matter are regulated in a fairly unambiguous manner and give priority to the service over the individual interests of the soldier. Most of the existing provisions prohibiting professional soldiers from taking on additional paid work have not changed. However, Article 335 of the Act on the defence of the Homeland introduces greater precision and new conditions, e.g. those concerning paid work in another military unit. This may limit the practice of employing soldiers on additional contracts within the armed forces. It is also important that in the event of a violation of the rules on additional work, the commander of the military unit is obliged to revoke the permit to perform gainful employment or conduct business activity. In the author's opinion, the regulations introduced in the Act on the Defence

of the Homeland have brought about beneficial changes compared to the Military Service Act, which affect the transparency and clarity of granting permits for additional work. However, there is still room for improvement in this regard. The commander has considerable discretion when it comes to granting consent. The provision does not define the method of assessing conflicts between work and official duties, which may lead to differences in practice among commanders of different units. The assessment of a soldier's prestige in the context of their work may also pose interpretation problems. This is a general clause that requires interpretative guidelines. The provision allows for work at military universities, but does not explicitly refer to civilian universities, which leads to the need for approvals and increased official supervision. It is worth noting that the realities of the labour market are becoming increasingly complex and new, flexible forms of employment are emerging, such as freelancing, platform work and the gig economy, which may in the future require clarification of the concept of gainful employment or the issuance of implementing regulations.

In summary, Article 335 of the Act on the defence of the Homeland is an important element stabilising the structure of professional service, protecting national security and counteracting abuse in the service. From a scientific point of view, this provision meets constitutional requirements and complies with standards concerning professional restrictions for members of uniformed services.

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