Ius et Securitas 2/2024 | ISSN 3071-799X

Mariusz Domżalski
18th Mechanized Division
Polish Land Forces
ORCID: 0000-0002-7749-2598
mariuszdomzalski89@gmail.com

Call up for Professional Military Service

Abstract

According to art. 5 of the Constitution of the Republic of Poland, the remarks concerning the security and inviolability of its territory, ensure the freedoms and rights of man and citizen and security, warnings of national heritage and ensure the security of security, reservations of the principle of application of development. Necessary for security is what causes, and as a result arise, which are responsible for the internal and external security of the state. The executive element of this system is the Armed Forces. The legislator by creating a broad catalogue, which must be a candidate for a soldier, which aimed to select people who will properly perform service in the Polish Army.

The aim of the article is to indicate the requirements that must be met in order to be called up for professional military service. The formal-dogmatic method was of fundamental importance, enriched in some places by the theoretical-legal method. The use of the formal-dogmatic analytical method consisted in a detailed analysis of national legal acts concerning the call up for professional military service. An important element of the work was the analysis of case law. An analysis of the judgments of the Supreme Administrative Court and Provincial Administrative Courts was made.

Keywords: professional military service, service relationship, call up.

Introduction

A call up to professional military service may occur if the needs of the Armed Forces support it. At present, given the ongoing professionalization of the Armed Forces, only a person who understands the tasks assigned to

the Armed Forces as a formation guarding the independence and inviolability of Poland's borders may be called up to professional military service.

A discretionary decision of the body authorized to call up for professional military service, dependent on the existence of a need (current interest) of the Armed Forces. This assessment can only be made by a military body, not a candidate for service[1]. The decision to call up a reserve soldier for professional military service is optional, so the body cannot be denied the right to set high standards of selection and the possibility of calling up only the best candidates for service[2].

The legislator granted military authorities the possibility of conscripting a person who has qualifications for professional military service, provided that the conscription of such a person is justified by the needs of the Armed Forces. Consequently, the authority, making a free assessment of the evidence collected, may decide a given case by considering certain facts and arguments raised by the party as important, while considering others as irrelevant to the decision. In the course of making the aforementioned assessment, the public administration authority should take into account the legitimate interest of citizens and take into account the public interest, which is defined, among others, by art. 185 sec. 1 of the Act of 11 March 2022 on the Defense of the Homeland[3]. Therefore, the accuracy of the decision in each individual case requires a detailed examination and consideration of all arguments that would constitute the basis for adopting a specific position[4].

A call up to professional military service may occur if the needs of the Armed Forces support it. The use of this concept by the legislator as a premise justifying the call-up to professional military service constitutes a restriction on the scope of voluntary call-up by the relevant military bodies[5]. Call-ups to professional military service must be conducted in a way that enables the Armed Forces to have the capability for operational use.

The decision on the call-up of a person to professional military service is a discretionary decision. This means that the legislator has granted military

[1] Judgment of the Provincial Administrative Court in Warsaw of February 18 2021, II SA/Wa 1565/20, No. 3242715.

[2] Judgment of the Provincial Administrative Court in Warsaw of 28 September 2021, II SA/Wa 973/21, LEX No. 3310301.

[3] The Journal of Laws 2024, item 248.

[4] Judgment of the Provincial Administrative Court in Warsaw of 17 December 2009, II SA/Wa 1464/09, LEX No. 583166.

[5] M. Karpiuk, *Służba wojskowa żołnierzy zawodowych*, Olsztyn 2019, p. 87.

authorities the possibility of calling a person who has qualifications to professional military service, provided that the call-up of such a person is justified by the needs of the Armed Forces. Consequently, the authority, making a free assessment of the evidence collected, may resolve a given case by considering certain facts and arguments raised by the party as important, while considering others as irrelevant to the decision. In the course of making the aforementioned assessment, the public administration authority should take into account the legitimate interest of citizens and take into account the public interest, which is identical to the interest of the Armed Forces.

One of the overriding needs of the Armed Forces is that reserve soldiers, by their attitude before being called up for professional military service, provide a guarantee of acting in accordance with the provisions regulating the course of service. Such a far-reaching primacy of the public interest over the interest of the individual is justified and understandable in this area. Therefore, the provisions of the law do not provide for any claims or guarantees of call-up in this respect. Authorized military bodies conduct a personnel policy consistent with the needs of the Armed Forces and in this matter decide, among other things, on call-up for professional military service, based on the provisions of generally applicable law. Therefore, the assessment of a soldier's usefulness in service belongs solely to the military bodies, and not to the soldier himself[6].

In contrast to the regulations in force in the previous pragmatics, currently the call-up to professional military service is for an indefinite period. The service relationship of a professional soldier is established by means of call up on the basis of voluntary reporting for this service.

The view is well-established in the literature that we distinguish between two types of service relationships: a service employment relationship to which the provisions of the Labor Code will apply and service relationships to which the provisions of the Administrative Code will apply[7]. The legal basis for the creation of these relationships is a nomination, which in relation to the military service of professional soldiers is called a "vocation". It should be noted that there are two types of nomination. A nomination (appointment) resulting in the establishment of a service employment rela-

[6] Judgment of the Provincial Administrative Court in Warsaw of 28 September 2021, II SA/Wa 973/21, LEX No. 3310301.

[7] T. Kuczyński, *Odesłania do prawa pracy i prawa cywilnego w niepracowniczych pragmatykach służbowych*, „Przegląd Sądowy" 2007, No. 10, p. 97.

tionship (Article 76 of Act of 26 June 1974 – Labor Code[8]) and a nomination (appointment) resulting in the creation of an administrative-law service relationship[9]. The regulations contained in the Act on the Defense of the Homeland do not differ from a nomination, which is the source of the service relationship of officers of other uniformed services[10].

The act of appointment takes the form of an administrative decision issued as a result of administrative proceedings[11]. Due to the specific nature of the service relationship, administrative decisions regarding the establishment, change of content and termination of the service relationship are in military pragmatics (as well as in other service pragmatics) called a personnel order[12]. It is worth noting that a party may file a complaint to an administrative court against a personnel order refusing to conscript to professional military service. The resolution of the Provincial Administrative Court in Warsaw, which stated that a complaint against a decision refusing to conscript to professional military service is inadmissible and subject to rejection, should be considered as individual and irrelevant[13].

The fact that the service relationship of a professional soldier is an administrative-law relationship determines the nature of the regulations concerning his performance of professional military service contained in the Pragmatic Act and its implementing acts[14].

---

[8] The Journal of Laws 2023 item 1465, as amended.

[9] Judgment of the Supreme Administrative Court of 3 October 2006, I OSK 210/06, LEX No. 28141; S. Antoniuk, P. Szustakiewicz, *Przedawnienie roszczeń z tytułu prawa do uposażenia i innych należności pieniężnych przysługujących na podstawie stosunku służbowego na tle orzecznictwa sądów administracyjnych*, „Ius Novum" 2011, No. 1, p. 91; D. Nowak, *Istota, strony i przedmiot administracyjnoprawnego stosunku służbowego funkcjonariuszy służb mundurowych i żołnierzy zawodowych*, „Casus" 2014, No. 72, p. 59.

[10] Judgment of the Constitutional Tribunal of 9 June 1997, K 24/96, LEX No. 29144; B. Jaworski, *Przekształcenie stosunku służbowego funkcjonariuszy*, „Acta Universitatis Lodziensis" 2019, No. 87, p. 30; M. Liwo, *Status służb mundurowych i funkcjonariuszy w nich zatrudnionych*, Warszawa 2013, p. 289-290.

[11] Judgment of the Supreme Administrative Court of 5 June 1991, II SA 35/91, LEX No. 10220; M. Czechowski, *Prawny charakter zatrudnienia żołnierzy zawodowych*, Toruń 2016, p. 29-30.

[12] A. Korcz-Maciejko, *Charakter prawny rozkazu personalnego,* „Administracja: Teoria, Dydaktyka, Praktyka" 2013, No. 3, p. 140.

[13] Resolution of the Provincial Administrative Court in Warsaw of 13 January 2009, II SA/Wa 1325/08, LEX No. 1054998.

[14] K.W. Baran, *O systematyce i delimitacji niepracowniczych stosunków zatrudnienia*, [in:] *Z zagadnień prawa pracy i prawa socjalnego. Księga jubileuszowa Profesora Herberta Szurgacza*,

The date of commencement of professional military service and the service position in which this service will be performed are specified in the personnel order.

Conditions of call up for service

A person who meets the following conditions may be called up for military service: he/she is a Polish citizen, has an unblemished reputation, is physically and mentally fit to perform military service, is at least 18 years old, has not been convicted of an intentional crime, is not designated for substitute service, is not excluded from the obligation to perform active military service in the event of mobilization and during war, does not have an organizational and mobilization assignment to serve in a militarized unit.

The education of a person who wants to join the Armed Forces is also important. In the case of serving in a position in the officer corps, it is necessary to have at least a higher education, in the case of serving in a position in the non-commissioned officer corps, at least secondary or vocational education, and in the case of serving in a position in the private corps, at least primary education.

Call-up for military service may also be dependent on the candidate for soldier having the qualifications required to hold the service position, having a decision stating that there are no contraindications to serving in positions requiring special psychophysical predispositions or submitting a personal security questionnaire.

The first condition that must be met in order to be called up for professional military service is to have Polish citizenship. The Constitution lacks a legal definition of „Polish citizenship". Given the high frequency of this phrase in the Constitution, it should be considered a „legally existing" construction. In the literature on the subject, citizenship is defined as „a formal and legal bond connecting an individual with the state, from which arise rights, freedoms and obligations both towards the state and its citizens"[15].

Another attribute of a professional soldier is an impeccable reputation. The Pragmatic Act does not contain a legal definition of „unblemished rep-

Z. Kubot, T. Kuczyński [eds.], Warszawa 2011, s. 32-33; M. Karpiuk, *Stosunek służbowy militaryzacji*, „Przegląd Prawno-Ekonomiczny" 2016, No. 3, s. 51.

[15] W. Maciejko, M. Rojewski, A. Suławko-Karetko, *Prawo administracyjne. Zarys wykładu części szczególnej*, Warszawa 2011, p. 7.

utation", therefore, when analyzing this premise, the dictionary definition should be adopted, according to which „unblemished" is someone to whom nothing can be accused, attributed, impeccable. This concept refers to both private and professional life. Usually, the loss of unblemished reputation is a consequence of punishment in criminal or disciplinary proceedings. Only exceptional circumstances relative to the perpetrator may be considered that in a given specific case this is not the case. It should be noted that the mere suspicion that a soldier may have committed prohibited acts indicates a failure to meet the requirement of impeccable moral attitude, which determines the ability to perform public service[16].

It is worth noting that it is not only a criminal record that causes the loss of an unblemished reputation. An unblemished reputation is also a general assessment of a given person in the ethical sphere[17]. The Supreme Administrative Court stated that „an unblemished reputation is primarily evidenced by the lack of accusations of a crime or misdemeanor, the fact of a clean criminal record, but also the general assessment of a given person in the ethical sphere"[18].

Only a person who is physically and mentally capable of performing military service can become a professional soldier. Only an appropriate state of health allows one to perform their official duties in an appropriate manner[19].

A person applying for conscription to military service is referred to a military medical board of their choice, and in the case of determining fitness for service in individual branches of the Armed Forces and branches of troops - to the relevant military medical board. The directing body is the territorially competent head of the military recruitment center.

The military medical board issues a decision, which is an administrative decision[20]. The decision of the military medical board is delivered in writing,

[16] Judgment of the Supreme Administrative Court of 5 October 2021, III OSK 4269/21, LEX No. 3266918.

[17] Judgment of the Supreme Administrative Court of 5 July 2016, I OSK 2460/14, LEX No. 2100617; M. Laskowski, *Ustawowe pojęcie „nieskazitelności charakteru"*, „Prokuratura i Prawo" 2008, No. 6, p. 50-65.

[18] Judgment of the Supreme Administrative Court of 4 November 2009, I OSK 334/09, LEX No. 586372.

[19] M. Domżalski, *Odwołanie od orzeczenia wojskowej komisji lekarskiej*, „Cybersecurity and Law" 2021, No. 6, p. 168.

[20] M. Domżalski, *Przyczyny obligatoryjnego rozwiązania stosunku służbowego w wybranych służbach mundurowych*, „Prawo i Polityka" 2023, No. 11, p. 39.

together with the justification, recorded in paper or electronic form, to the person referred to the military medical board and to the body that referred that person to the military medical board.

Professional military service may only be performed by a person who has category A of capacity for active military service, which means the ability to perform or carry out active military service or reserve service, as well as the ability to perform alternative service.

Detailed regulations on ruling on fitness for professional military service are included in the Ordinance of the Minister of National Defense of 25 March 2024 on ruling on fitness for military service and the procedure of military medical boards in these matters[21].

Candidates for professional military service must also obtain a psychological certificate stating that there are no contraindications to performing professional military service.

A psychological opinion is issued by a psychologist authorized to conduct psychological tests. Based on the results of the test, the psychologist issues a psychological opinion stating the existence or lack of contraindications to performing active military service. The psychological opinion is delivered in writing, recorded in paper or electronic form, to the examined person and the head of the military recruitment center or the commander of a military unit.

Detailed regulations regarding psychological examinations are included in the Ordinance of the Minister of National Defense of May 5 2022 on psychological examinations of persons called up for active military service[22].

A candidate for military service must be at least 18 years old. The legislator has recognized that a person who has turned 18 is mature enough in terms of psychophysical health to be able to perform professional military service. A person becomes an adult at the time of turning 18, regardless of any additional circumstances.

A person who declares their willingness to join professional military service cannot be punished for an intentional crime. This clearly corresponds to the obligation of impeccable reputation, because a conviction for an intentional crime should usually result in the loss of the attribute of impeccable character[23].

---

[21] The Journal of Laws 2024 item 466.

[22] The Journal of Laws 2022 item 104.

[23] Judgment of the Supreme Court of November 18, 2021, II DOW 54/21, LEX No. 3359094.

A candidate for a professional soldier cannot be designated for alternative service. Alternative service involves performing work for environmental protection, fire protection, health care, social assistance, care for people with disabilities or the homeless, and for public administration and the justice system by those subject to compulsory military service, whose religious beliefs or moral principles do not allow them to perform this service or to perform service in armed formations that are not part of the Armed Forces.

Performing military service also excludes exemption from the obligation to perform active military service in the event of mobilization and during war, as well as having an organizational and mobilization assignment to serve in a militarized unit.

A person who meets all of the following conditions may be called up for professional military service in the officer corps: has a professional title of at least a master's degree or equivalent and has a military rank equal to or directly lower than the rank of the full-time service position to which he or she is to be appointed; in the non-commissioned officer corps, a person who meets all of the following conditions: has at least secondary or secondary vocational education and has a military rank equal to or directly lower than the military rank of the full-time position to which he or she is to be classified after being called up for professional military service; in the private corps, a person who meets all of the following conditions: has at least primary, lower secondary, basic vocational or basic vocational education, has professional training or qualifications or skills useful in the personnel corps in which he or she is to perform professional military service and has completed at least basic training as part of voluntary basic military service, provided that he or she has not previously performed active military service.

Different regulations regarding the call-up for professional military service apply to candidates for professional military service studying at a military academy, a non-commissioned officer school, a training centre, a training centre and, in the case of education at a military academy as part of an officer course, candidates holding a master's degree or an equivalent degree.

The competences of the competent authorities entitled to call up for professional military service depend on the military rank of the soldier planned to be called up and, in the case of persons undergoing training, on the type of institution at which the training takes place.

Detailed regulations regarding the call-up to professional military service are included in the Ordinance of the Minister of National Defense of 27 June 2022 on the call up to professional military service[24].

Conclusions

The State's duty to itself is to ensure their safety. The functioning of uniformed services, including the Armed Forces, is essential for this. The fundamental goal of the Armed Forces is to ensure the security of the state by protecting its independence, territorial integrity and the security and inviolability of borders[25]. There will be no threat that the Armed Forces are also threatened by the protection of the state's escape. These tasks with specific scopes belonging to the species within the species, The very fact that "services" are particularly visible in the scopes defined by the soldier. Only a properly trained soldier, with psychological, physical and moral characteristics, can properly perform the duties incumbent on him.

The analysis of the regulations concerning call-up to professional military service contained in the Act on the Defence of the Homeland leads to the conclusion that the legislator, through a broad catalogue of requirements for a candidate applying for call-up to professional military service, influences in an appropriate manner the selection of candidates for service.

Bibliography

Antoniuk S., Szustakiewicz P., *Przedawnienie roszczeń z tytułu prawa do uposażenia i innych należności pieniężnych przysługujących na podstawie stosunku służbowego na tle orzecznictwa sądów administracyjnych*, „Ius Novum" 2011, No. 1.

Baran K.W., *O systematyce i delimitacji niepracowniczych stosunków zatrudnienia*, [in:] *Z zagadnień prawa pracy i prawa socjalnego. Księga jubileuszowa Profesora Herberta Szurgacza*, Kubot Z., Kuczyński T. [eds.], Warszawa 2011.

Czechowski M., *Prawny charakter zatrudnienia żołnierzy zawodowych*, Toruń 2016.

Domżalski M., *Neutralność polityczna sił zbrojnych w wymiarze prawnokonstytucyjnym*, „Wrocławskie Studia Politologiczne" 2023, No. 23, https://doi.org/10.19195/1643-0328.32.1.

[24] The Journal of Laws 2022 item 1384.

[25] M. Domżalski, *Neutralność polityczna sił zbrojnych w wymiarze prawnokonstytucyjnym*, „Wrocławskie Studia Politologiczne" 2023, No. 23, p. 8, https://doi.org/10.19195/1643-0328.32.1.

Domżalski M., *Odwołanie od orzeczenia wojskowej komisji lekarskiej*, „Cybersecurity and Law" 2021, No. 6, https://doi.org/10.35467/cal/146486.
Domżalski M., *Przyczyny obligatoryjnego rozwiązania stosunku służbowego w wybranych służbach mundurowych*, „Prawo i Polityka" 2023, No. 11.
Jaworski B., *Przekształcenie stosunku służbowego funkcjonariuszy*, „Acta Universitatis Lodziensis" 2019, No. 87.
Karpiuk M., *Służba wojskowa żołnierzy zawodowych*, Olsztyn 2019.
Karpiuk M., *Stosunek służbowy militaryzacji*, „Przegląd Prawno-Ekonomiczny" 2016, No. 3.
Korcz-Maciejko A., *Charakter prawny rozkazu personalnego,* „Administracja: Teoria, Dydaktyka, Praktyka" 2013, No. 3.
Kuczyński T., *Odesłania do prawa pracy i prawa cywilnego w niepracowniczych pragmatykach służbowych*, „Przegląd Sądowy" 2007, No. 10.
Laskowski M., *Ustawowe pojęcie „nieskazitelności charakteru"*, „Prokuratura i Prawo" 2008, No. 6.
Liwo M., *Status służb mundurowych i funkcjonariuszy w nich zatrudnionych*, Warszawa 2013.
Maciejko W., Rojewski M., Suławko-Karetko A., *Prawo administracyjne. Zarys wykładu części szczególnej*, Warszawa 2011.
Nowak D., *Istota, strony i przedmiot administracyjnoprawnego stosunku służbowego funkcjonariuszy służb mundurowych i żołnierzy zawodowych*, „Casus" 2014, No. 72.

* * *

Powołanie do zawodowej służby wojskowej

Streszczenie

Zgodnie z art. 5 Konstytucji RP Rzeczpospolita Polska strzeże niepodległości i nienaruszalności swojego terytorium, zapewnia wolności i prawa człowieka i obywatela oraz bezpieczeństwo obywateli, strzeże dziedzictwa narodowego oraz zapewnia ochronę środowiska, kierując się zasadą zrównoważonego rozwoju. Niezbędnym do zapewnienia bezpieczeństwa jest stworzenie odpowiednich mechanizmów, a w konsekwencji tego organów które będą odpowiedzialnie zarówno za bezpieczeństwo wewnętrzne, jak i zewnętrzne państwa. Głównym elementem tego systemu będą Siły Zbrojne RP. Ustawodawca poprzez stworzenie szerokiego katalogu wymagań, które musi spełnić kandydat na żołnierza zawodowego miał na celu wyselekcjonowanie osób, które będą w odpowiedni sposób pełnić służbę w Wojsku Polskim.

Celem artykułu jest wskazanie wymagań, których spełnienie jest niezbędne by zostać powołanym do zawodowej służby wojskowej. Znaczenie podstawowe miała metoda formalno-dogmatyczna wzbogacona w niektórych miejscach o metodę teore-

tyczno-prawną. Użycie metody analitycznej formalno-dogmatycznej polegało na poddaniu szczegółowej analizie krajowych aktów prawnych dotyczących powołania do zawodowej służby wojskowej. Istotnym elementem pracy była analiza orzecznictwa. Dokonano analizy orzeczeń Naczelnego Sądu Administracyjnego oraz Wojewódzkich Sądów Administracyjnych.

Słowa kluczowe: zawodowa służba wojskowa, stosunek służbowy, powołanie.