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SECURITY COMPANY OF PERSONS AND PROPERTY DEFENSE IN POLAND AND ENSURING SAFETY. LEGISLATIVE BASICS

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ABSTRACT

Currently, due to the severity of security threats to life and health of citizens and their property, particular attention was devoted to develop model solutions to effectively counter negative developments. The quest to ensure safety but must be accompanied by measures appropriate for the rule of law. This article presents the legal conditions of functioning of security companies of persons and property defense.

KEYWORDS

Security company of persons and property defense, the legislative basis, security

Introduction

The changes taking place in the modern world in all areas of human life are stunning, and the pace for the older generation is continually increasing. The former monotonous and unequivocal world disappeared from the scene of reality. This process has its own connotations in the social and political changes in Polish society and the rapid and permanent technological progress. (B. Laskowska 2005, p.173). Described situation can be seen in both positive and negative context. It carries a lot of good and a lot of dangers. Today, the security issue is perceived very widely. Lot of place in the discussions on security is taken by the "sense of security" by individuals or social groups, starting from the local security: personal, domestic, at school, educational, vocational, cultural, national rising to global security: political or economic. Research on sources of insecurity show that the sense of security many perceive in terms of family, friends and education. (D. Czajkowska-Ziobrowska, M. Kucharska, 2011, pp. 209-215; D. Czajkowska-Ziobrowska, 2007, pp. 16-25; M. Kučerka, J. Stebila, 2010, pp. 9-24; D. Czajkowska-Ziobrowska, 2008, pp. 201-208; E. Ambukita, 2007 pp.580-589; D. Czajkowska-Ziobrowska, P. Gąsiorek, P. Ziobrowski, 2011, pp. 52-77; M. Rybakowski A. Rosa, 2010, pp. 9-24). Many people are afraid of the threat in terms of violence against their persons and property. Today, many individuals and businesses are using the services of professional companies dealing with the protection of persons and property. On 22 August 1997., The Act on the protection of persons and property was introduced (Dz.U.97.114.740.). The said act defines the areas, facilities and equipment which are subject to mandatory protection. The legislature established rules for the establishment and functioning of the internal security service and the companies conducting business activity consisting of providing services for the protection of persons and their property.

Internal security services are armed and uniformed teams of employees whose job is to protect property of companies. While specialized armed security services are internal traders who have obtained a license to conduct business in the area of services involving the protection of persons and property. Both formations consist of security staff, so employees with (the former license of security employee or license of technical security worker) (W. Kotowski, pp. 11-12) present from 1 January 2014.: permissions of qualified physical security worker and certified technical security worker. Employee of security is also a person who performs tasks in the field of protection that does not require qualifications. Employees of security of persons and property must hold a completed course which is the basis for entitlement evidence of their qualifications as amended on 1 January 2014. Protection of people are actions being taken to ensure the safety of life, health and physical integrity. Protection of property but there are measures to prevent the crimes and offenses against property, as well as avoiding damage resulting from these negative events. These measures also include preventing unauthorized access to a protected area. Personal security is implemented in the form of direct physical protection and technical security. Direct physical protection is permanent or temporary eye contact of an agent (group) of the person protected for immediate responding to events that threaten the protected person. It can also be done in the form of a permanent surveillance transmitted signals, collected or processed by means of electronic devices and alarm systems. This type of protection also includes the secure transport of cash and other valuable or dangerous objects. In contrast, technical security aims at the assembly of electronic devices or alarm systems that signal possibly present threat of protected people. The legislature defined the eligibility requirements, which are the basis for entitlement of employee of the security and called oversight of the proper functioning of the protection of persons and property (W. Kotowski, pp. 12-13).



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Legislative basis

Security companies of persons and property defense carry out economic activities of particular social importance. Security guard, filling the duties of their profession, remains in contact both with the possibility of the use of physical restraint and ability to use firearms. Accordingly, the legislator clarified in laws, regulations and other acts of the legal scope of the protection of commercial agents.

The first legal regulation concerning the security staff was the law of 23 December 1988. concerning economic activity (Dz.U.98.41.324) in which it was mentioned on the economic operator providing services in the field of protection of persons and property. Then - thanks to Panel on Review of Subsidiary Specialist Formation of Enforcement and Property - appointed by the Council of Ministers at the suggestion of the Police Headquarters - a detailed analysis of the growing security market was performed. The result of the Group's work was a report on the Special Armed Safeguards Formations.

Currently, under the supervision of security companies are not just businesses and individuals, but also some state institutions. Of course, the company of physical security to function, it must have a license granted at the request of the applicant by the Minister of Internal Affairs and Administration. The license constitutes the scope and form of doing business of commercial services providing security of people and property.

The subject of a concession is to providing security of people and property. Fundamental importance for the legal regulation of commercial security industry have records of Law dated August 22, 1997, as amended, on the protection of persons and property relating to: the protection of people - that measures to ensure the safety of life, health and physical integrity (Art. 2. 4. Act on protection of persons and property) protection of property - actions to prevent the crimes and offenses against property, as well as anti-occurrence of the damage resulting from these events and not allowing the entry of unauthorized persons in the protected area (Art. 2. 5. Act on protection of persons and property).

Forms of realization of protection are: 1. direct physical protection: permanent or temporary; which consists of a fixed overseeing of signals transmitted, collected and processed in electronic devices and alarm systems; *involving the conveyance of cash and other valuables or dangerous items* (Art. 3. 1. *Act on protection of persons and property*). 2. technical protection, which involves: installation of electronic devices and alarm systems, signaling the threat of protected persons and property, and the operation, maintenance and repair in their installation; *installation of equipment and mechanical protection measures and their operations, maintenance, repair and emergency opening of the installation* (Art. 3. 2. *Act on protection of persons and property*). The legislature in the Law on the protection of persons and property also identified areas, facilities and equipment that are subject to mandatory protection; the rules of creation and functioning of the internal security service; rules of conducting business relating to the protection of people and property; required qualifications and powers of security personnel; supervision over the protection of persons and property; rules for the protection of transported weapons, ammunition, explosives, apparatus and military equipment (Art. 1 of the *Act on protection of persons and property*).

Commercial physical security company can also secure a building or area technically by installing electronic security systems that will signal present danger to protected persons or property. The range of technical security also includes maintenance of electronic equipment in their installation. In order to properly protect the company is required to install, in addition to the appropriate alarm systems, also equipment and means of mechanical protection (Art. 3 of the *Act on protection of persons and property*).

The Act on protection of persons and property defines the areas, facilities and transports, which are protected by operation of law. These are, in particular:

- The areas considered important for the state defense and public security, which must be protected by armed security specialist or an appropriate technical protection (Art. 5.1. Act on protection of persons and property), which are: special production facilities; facilities in which research or designing for such production are carried out; facilities producing, renovating and storing weaponry, devices and military equipment; state reserves warehouses (Art. 5.2.1. of the Act on protection of persons and property).
- Areas of particular importance in the field of economy and, in particular directly related to the extraction of minerals of strategic importance, as well as seaports and airports, banks, factories producing enterprise values of cash and transporting them (Art. 5.2.2. Act on protection of persons and property).
- Areas of public safety, in particular plants, facilities and equipment which is essential for the functioning of urban agglomerations, which destruction or damage could endanger the lives and health of people and the environment, in particular power plants and heating plants, water intakes, water and sewage treatment plants; facilities using, producing or storing significant quantities of nuclear materials, sources and radioactive waste, toxic materials, narcotics, explosives or chemicals with a high susceptibility of fire or explosion; fuel pipelines, power and telecommunication lines, dams and locks and other devices in an open area, where damage or destruction could endanger human life or health, threaten the environment or cause serious damage to property (Art. 5.2.3 of the Act on protection of persons and property); areas important for economic reasons or cultural states.

in particular plants with unique economic production; facilities and equipment for telecommunications, postal, broadcasting for television and radio; museums and other facilities in which the goods of the national culture are stored; state archives.



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To draw up detailed lists, the Act requires the President of the Polish National Bank, the National Council of Radio and Television, individual ministers and heads of central and provincial governors. Placement in the records, which are confidential, specified area, as particularly important and subject to mandatory protection, is conducted by way of an administrative decision. In addition, provincial governors keep records in the province of areas, facilities and equipment which are subject to mandatory protection. To manage the protection of designated objects province governor shall appoint a responsible person who must have the authority of **qualified employee of physical security**. In contrast, conservation management plans for designated facilities shall be agreed with the commander of the provincial police (Art. 7.1. the *Act on protection of persons and property*). Moreover, the person responsible for protecting is obliged to determine with the commander of the police, at least three days in advance before the date of transport of subject to mandatory protection, transportation security plan (Art. 7.1a. *Act on protection of persons and property*).

A detailed plan for transport security, prepared and submitted to the Regional Police commander, should: take into account the nature of the production or activity; include analysis of the potential risks and the current state of security of the facility, give an assessment of the current state of protection of the facility; include data on the formation of specialist armed protection, including: a) full-time status, b) the nature and quantity of weapons and equipment, c) the security of weapons and ammunition; contain data on the type of technical security; contain rules of organization and execution protection of the facility (Art. 7.2. Act on protection of persons and property).

The employer settled the rules of creation, organizational structure, together with the scope of action, arming and operation of the internal security service (*Regulation of the The Ministry of Internal Affairs and Administration of 17 November 1998, on internal security service §1. 1*), with which employees of enterprises or organization units are armed and uniformed of. However, they can function only after obtaining a license. Whilst the internal security service are to provide security services within objects; ensuring the protection of important equipment units, which are located outside protect areas and facilities; escorting conveyed property; performing other tasks ordered within the plan of protection (Art. 8.1a. *Act on protection of persons and property*).

The internal security service, which name starts with the word *guard* or *service* (*Regulation of the The Ministry of Internal Affairs and Administration of 17 November 1998. on internal security service* §18. 2, Dz.U.99.4.13.) is formed by the head of the unit in which determined service operates, taking into account the nature of the activity or production of the entity or the name of the protected area, object or device. The legislator noted in §5 that the scope of the internal security services should be: to ensure the safety of persons within the boundaries of protected areas and objects of facility; protection of buildings, premises and equipment against access by unauthorized persons; protection of property from theft, destruction or damage; escorting property; prevention of disorder in the facility and notification of the manager about an event causing a breach of the order; disclosure of any devastation facts of property; immediately notify law enforcement agencies about the criminal activities occurred in the facility and secure place of the offenses until the arrival of law enforcement (*Regulation of the The Ministry of Internal Affairs and Administration of 17 November 1998. on internal security service* § 5. 2 Dz.U.99.4.13).

The legislator noted that the internal security services for the protection of persons and property are obliged to cooperate with the police, fire brigade, civil defense and municipal guards. (These tasks can be defined as basic, because these services can also provide services to the outside. Art. 12 of the Act on the protection of persons and property).

Internal security service can be created in two variants: to protect areas and objects in the facility subordinate to mandatory protection; protect other areas and objects that are not subject to mandatory protection and may be formed at the request of the head of the organizational unit (Art. 10.1. Act on the protection of persons and property).

According to the Act, authorization to establish internal security services cannot be issued if: a protection plan does not contain the information provided in Art. 7 paragraph. 2; individual applicant fails to provide the fulfillment of all the conditions under the provisions of the Act (Art. 11.1. Act on the protection of persons and property).

In contrast, the commander of the provincial police, by an administrative decision, revokes a permission to operate as internal security service, if there is one of the circumstances specified in the Act, namely: head of unit submitted such a request; an internal security service was not created in a period of 3 months from the date of issue of the permit; glaring shortcomings or irregularities in the organization of internal security services found during the inspections were not removed within the prescribed period; internal security service activities are not carried out in accordance with the plan of protection; , the circumstances for which a permit has been issued ceased (Art. 11.2. Act on the protection of persons and property).

The scope of the internal security services should be: to ensure the safety of persons within the boundaries of protected areas and facility objects; protection of buildings, premises and equipment against access by unauthorized persons; protection of property from theft, destruction or damage; escorting property; prevention of disorder in the facility and notify the manager of an event causing a breach of the order; disclosure of any facts devastation of property; immediately notify law enforcement agencies about the criminal activities occurred in the facility and secure place of the offenses until the arrival of law enforcement (Regulation of the The Ministry of Internal Affairs and Administration of 17 November 1998. on internal security service § 5. 2 Dz.U.99.4.13).

Mandatory protection exercised by specialist armed security supported by appropriate technical protection is performed within areas, facilities and equipment of particular importance to national defense and economic interests of the country, as well as public safety and other vital interests of the state. They have been distinguished four degrees of



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importance, which are assigned to specific objects relating to: defense of the State; economic interests of the state; public safety; other important interests of the state.

For the defense of the State undoubtedly of particular importance are special production facilities and establishments where work is being conducted on a scientific field and warehouses of state reserves. Ensuring the protection of economic interests of the state belongs to facilities directly related to the mining of minerals of strategic importance for the state, ports and airports, banks and enterprises producing, storing or transporting cash values with significant values. In turn of public safety is provided in particular by: plants, facilities and equipment which is essential for the functioning of urban agglomerations, which destruction or damage could endanger the lives and health of people and the environment, in particular power plants and heating plants, water intakes, water and sewage treatment plants; facilities using, producing or storing significant quantities of nuclear materials, sources and radioactive waste, toxic materials, narcotics, explosives or chemicals with a high susceptibility of fire or explosion; fuel pipelines, power and telecommunication lines, dams and locks and other devices in an open area, where damage or destruction could endanger human life or health, threaten the environment or cause serious damage to property. In order to ensure the protection of these objects internal security services are created.

Within the organizational structure of internal security service may be branches, sub-units or independent stations (§ 6.1.Regulation of the The Ministry of Internal Affairs. on internal security service). Depending on the composition of the organizational structure, independent corporate positions can be created, such as chief of security (§ 7.1. Regulation of the The Ministry of Internal Affairs. on internal security service), deputy head of security (§ 7.2. Regulation of the The Ministry of Internal Affairs. on internal security service), commander of shift (§ 7.3. Regulation of the The Ministry of Internal Affairs. on internal security service) senior guard-overseer, guard-overseer (§ 7.5. Regulation of the The Ministry of Internal Affairs. on internal security service). The scope of the internal security services should be: to ensure the safety of persons within the boundaries of protected areas and facilities, protection of buildings, premises and equipment against access by unauthorized persons, protection of the facilities against theft, destruction or damage to property, escorting, prevention of disorder in the facilities and notifying the manager of an event causing nuisance (§ 9.1. Regulation of the The Ministry of Internal Affairs. on internal security service). Employees, depending on the needs, are equipped with: wireless; bulletproof vests and helmets; gas masks; electric torch; dressings; transportation (§ 11. Regulation of the The Ministry of Internal Affairs. on internal security service).

Legislator in section 4 of the Act describes the rules of doing business in the field of protection of people and property and the legitimacy of its control by the Police Department. To conduct security companies must be licensed. After prior consultation with the competent commander of the provincial police, the Minister of Internal Affairs and Administration (Art. 16 of the Act on the Protection of persons and property) give permission at proposal of: an entrepreneur who is a natural person, if he has powers of a qualified employee's of physical security (the former from January 1, 2014 r. second degree licensed security officer; entrepreneur other than a natural person, if possesses a license referred to in paragraph 1), has at least one person who is a partner in a civil partnership, or limited partnership, a member of the board, proxy or attorney established by the entrepreneur to drive activities specified in the license (Art. 17.1 of the Act on the protection of persons and property).

Minister of Internal Affairs and Administration may refuse to grant a concession or limit its scope, as well as deny the modification of concessions when: the entrepreneur does not fulfill the conditions set forth in the pursuit of activities covered by the license; because of the threat to the defense and national security and safety or personal rights of citizens; entrepreneurs who, in the past three years was revoked a license for the activities specified in the Act on the grounds mentioned in Art. 22 paragraph. 1 point 1, par. 2 and 3 or if the entrepreneur represents the person who was the person authorized to represent another entrepreneur or was attorney set to direct the activities specified in the license, and its activity resulted in a decision revoking the concession of entrepreneur; entrepreneurs, who in the past three years was removed from the register of regulated activity due to making a statement inconsistent with the facts; when liquidation was conducted against the entrepreneur or bankruptcy was declared (lbid, Art. 17.a.).

Minister of Internal Affairs and Administration by regulation of 27 May 1998. on the types of documents required when applying for a license to conduct business in the protection of people and property; specified the types of documents required with the application for a license (Comp. Minister of Internal Affairs [Director of the Department of Permits and Concessions]. Warsaw, August 2004. The information for entrepreneurs applying for a license by Ministry of Internal Affairs and Administration to conduct business in the field of security services people and property). The license contains the basic information of company, which include: the indication of its registered office and address, REGON number and NIP; basic personal information of shareholders or board members, proxies and attorneys in the event of the establishment, indicating the person having powers of a qualified employee's physical security; definition of the scope of economic activities and forms of conducting services for the protection of persons and property; an indication of the area of activity; the term of the license; definition of the exercise of economic activities in the protection of persons and property (Art. 18.1 of the Act on the protection of persons and property). Entrepreneur during the conduct of those activities should prepare appropriate documentation (Regulation of the Minister of Internal Affairs and Administration on the documentation required for doing business in the field of protection of people and property and storage time) of company, relating to workforce of protection, concluded and executed contracts; keep a written form of agreements in the scope of business;



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employees of security companies and persons should be marked in a uniform manner, allowing their identification and the identification of their employing entity (Art. 20 of the *Act on the protection of persons and property*) and have a uniform, not to beconfused with another company or other public services.

The licensing authority has the right, by way of an administrative decision, of revocation or change of its scope. It does so, however, in case of threat to national defense and security or safety of citizens, as well as in case of declaring bankruptcy. Withdraws decision if: issued a final decision prohibiting the company from performing economic activity covered by the license; entrepreneur has not made activity within the prescribed period of covered by the license regardless of the request of the licensing body or permanently ceased to perform economic activity covered by the concession (Art. 22.1. Act on protection of persons and property). May withdraw or modify its scope, if the entrepreneur: has not removed the factual or legal inconsistency with the terms of the license or regulations governing business activity covered by the license within the deadline; flagrantly violated the terms of the license, or other requirements related to licensed activity, prescribed by law.

The legislator described in Chapter 5 qualification requirements, skills (from 1 January 2014) which security staff or employees of technical security have to meet the in order to receive permissions for activities of **qualified employee of physical protection**. They should also have an appropriate opinion issued by the Chief of Police (*Regulation of the Minister of Internal Affairs and Administration dated 4 June 1998. On the form and procedure of issuing licenses of physical protection worker and licensing technical security worker and the mode and frequency of issuing by the authorities of Police reviews for protection employees*).

These powers give the right to perform actions by: members of the armed formation of specialized equipment; team members escorting cash and other valuables or dangerous items; security personnel directly engaged in activities related to the protection of people; supervising and controlling the work of physical security personnel not entitled qualified as **worker protection**; and security personnel having the powers of a **qualified employees of physical security** performing activities referred to in Art. 36 paragraph. 1 items 4 and 5; workers of security performing tasks in the areas, in buildings and equipment which are subject to mandatory protection (Art. 26.1. Act on protection of persons and property).

For permissions of **qualified physical protection worker** for a person who: is a Polish citizen or a citizenship from another country of the European Union or Member States of the European Free Trade Association (EFTA) - a party to the Agreement on the European Economic Area; is 21 years of age; completed primary school; has full capacity to act, has not been convicted by a final judgment for an intentional crime; is regulated by military service can apply (Art. 26.2 of the *Act on the protection of persons and property*).

Such a person must also meet the relevant requirements in terms of psychological predispositions (*Regulation of the Minister of Health and Social Welfare of 23 March 1999. on medical and psychological examinations of applicants for a license and licensed employee of physical protection*) and have: good standing issued the commander of the police station proper because of place of residence; physical and mental ability to perform tasks, recorded in medical certificate; diploma or certificate of school or other educational institution that confirm obtaining specialized training, either perform impeccable service as non-commissioned officer or ensign in the Office of the Government Protection for at least 15 years, or completed the course for qualified security staff and pass the exam before the competent committee (Art. 26.3 . *Act on protection of persons and property*).

Permissions of **qualified technical security worker** is issued to a person who is of age and meets the requirements for citizenship and criminal record (Ibid, Art. 28.1 and 2) and also has technical vocational education, specializing in electronic, electrical, communications, mechanical or completed a course for technological security worker or has been taught to these jobs (art. 28.2.3 of the Act on the protection of persons and property).

The Act does not specify the rights and obligations of employees of technical protection, and strictly defines the rights of physical protection workers. Qualified protection worker has the right to: establishing the entitlement to reside in areas or in buildings protected and legitimate; call unauthorized people to leave the protected area; call people who disturb public order to leave the area; capture a person posing a threat to human life or health, and hand them to the authorities of the Police, the use of coercive measures; the use of firearms in cases when: refutes a direct and unlawful attempt on the life or health of the protection worker or another person, the attacker does not comply with the summons to immediately drop the weapon or other dangerous object, a person directly attacks a security guard and wants to seize a firearm by force, rejects violent direct assault on the protected person, cash and other valuable or dangerous objects.

It should also be noted that in the field of personal and property security, working personnel possess old security guards licenses renamed to a qualified physical security or technical protection employees and people who do not have license and work as unskilled workers of physical protection in the commercial sector. The latter act as guardians and exercise supervision. Unfortunately, semiotics of advertising slogans led to no distinction between the protection and supervision, operations from intervention and on top of which it is not clear in identifying whether we are dealing with an employee qualified or unqualified. In the first case the inscription placed in the upper right corner indicates that person is a qualified employee of physical protection while in the second case, the employee physical protection which for the average citizen is not clear. The term identifying word Qualified requires ten seconds read the contents of legitimacy which according to the author of this publication is fundamentally flawed and could lead to the use by lawyers for the defense of the striker. Basic principles for the identification of powers by the posted identifier should be, according to the author



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immediate activity. It was enough to eliminate the photo for a non-qualified employee or put word qualified at the entire width of legitimacy by writing a much larger font. Author of the new law amending the license rights has not taken into account, as it was the case under the previous Act, instant identification of the security officer as to ones authority. The changes were made through content rather than substance. Current identification can lead to misinterpretation of protection employee entitlements.

With reference to Art. 47 - Regulation of the Minister of Internal Affairs and Administration of 18 December 2007. on the detailed rules of cooperation of specialist armed formations with the police, fire protection units, civil defense and municipal guards (Dz.U.98.161.1108.) and to clarify the area in which employees of security companies to protect persons and property operate, the author has developed the classification of types of protection.

Below is a diagram illustrating both the area to be protected as well as area not subjected to protection in combination with the requirements of the Act as to the need for a concession / license, permit activity of the Police, concession / license for the provision of services pursuant to Art. 15 of the Act on the protection of persons and property. The diagram has also identified these areas of activity, which FOOM (Company for Protection of Persons and Property by naming of the author) do not need to have a license / permit or authorization according to 15 paragraph. 2nd Act on the protection of persons and property. Company for Protection of Persons and Property must possess the appropriate license / permission to perform the relevant specialist tasks in the field of protection in an area that does not require protection in accordance with Art. 26 paragraphs 2 and 3 or on the basis of Art. 15. The Act allows for FOOM in areas not subjected to mandatory protection to perform tasks related to technical security, ie. assembly of technical security or maintenance, as well as electronic monitoring, as well as protecting their own property without the appropriate permits

Used division for the protection of persons and property, which requires from both the management and employees to have necessary **qualifications** of security employees, and the unqualified protection, which does not require the employee permission, allows the introduction of new semantics concepts. A security guard is qualified security agent, unqualified protection employee - is a caretaker (supervisor). Such a division and allocation of responsibilities, based on their qualifications, will help to increase the prestige of security guards who will not be likened to those supervising protected objects. Also in this range of services to protect, one must extract a further division: companies providing services to protect property for outside bodies in the field of specialist armed formations protection (SUFO) and internal service protection (WSO) established for the purposes of the establishment qualified to the area of mandatory protection, ie facilities, that perform their activities internally only for their company, not being able to provide the same services to the outside. This distinction is easier to understand from the perspective of the employer. In the first case the employer is also the customer, while in the latter case - is not a customer. This distinction is of great importance to the preparations for the occupation of protection and enforcement coercive measures by such employee, in particular - of a firearm.

According to the author the publication, the effectiveness of personal protective equipment depends among other things on the number of security employees when diagnosed degrees of danger to protected persons or property. And so, when there is a threat of harassment, ridicule or violation of personal dignity of protected person, normally enough assist is at least one security guard. Personal protection by at least two employees is required when there is a reasonable suspicion of second degree of danger (an attack on health), while in case of an emergency third degree (the assassination) personal protection should consist of a minimum of four FOOM employees. But it is a subject that requires a separate publication. Hereby the author redirects the honorable readers of this publication to his textbook entitled "Personal Protection" published by the University of Security in Poznan from 2015.

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