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THE ROLE OF THE PRIVATE INVESTIGATOR IN THE SEARCH FOR MISSING PERSONS

Summary

The phenomenon of missing persons is undoubtedly a social problem. The issue of missing persons is complex, multifaceted, multifaceted, and interdisciplinary. As a rule, searches for missing persons are carried out by the police, who have been authorized by the legislature to carry out such tasks. Undoubtedly, legislative, systemic, organizational, and technical solutions allow police officers to professionally carry out official activities related to the search for missing persons, although it should be remembered that the disappearance of a person is a situation in which the whereabouts of an individual is not known and there is a need to find him or her, perhaps also to ensure the protection of life, health or freedom. However, the police are not the only entity that can perform activities in connection with the search for missing persons. In the social reality of a free market economy, detective services are provided, and within the framework of these services, in accordance with current legislation, it is possible to perform activities in the search for missing persons.

Keywords: information, statistics, detective, detective services, investigative operations, databases, missing person, search for missing persons, police, cooperation

Introduction

From time to time, news and announcements are made in the public space regarding the disappearance of people whose fate is unknown. The purpose of these communications is, of course, to get as much information as possible from the public that may be related to the disappearance of this person, which will allow the person to be found. The missing persons

include men and women of all ages, as well as children and teenagers. Undoubtedly, the disappearance of a person is a complex, complicated, multifaceted, and interdisciplinary problem determined by many factors, and the resulting consequences have a very broad spectrum since they do not affect only and exclusively the missing person, his family and loved ones, but also friends, acquaintances, co-workers and employers, the local community, i.e. society seen as a whole. Thus, the phenomenon of a missing person is not an individual problem, but a social problem. The first steps in this direction are usually taken by family and loved ones, which is not always successful. Then, as it were, the natural reaction is to report the fact that a person is missing to a police unit, since the designated formation is responsible, among other things, for ensuring the safety of citizens. Nevertheless, despite making such a notification, questions and doubts may arise, such as what else can be done to find the missing person, or whether nothing more could be done. Unfortunately, there are cases of missing persons that, despite the passage of many years since the incident and the involvement of a large number of forces and resources, have not been explained. This article describes this complex issue, taking into account the role that private detectives, who are representatives of security service providers, can play in the search for missing persons, which is all the more important because the detective profession in our country is perceived by stereotypes of thinking created in a way that is divorced from factual considerations. The result of this may be that the public has excessive expectations of investigators that are inconsistent with the legal arrangements in place.

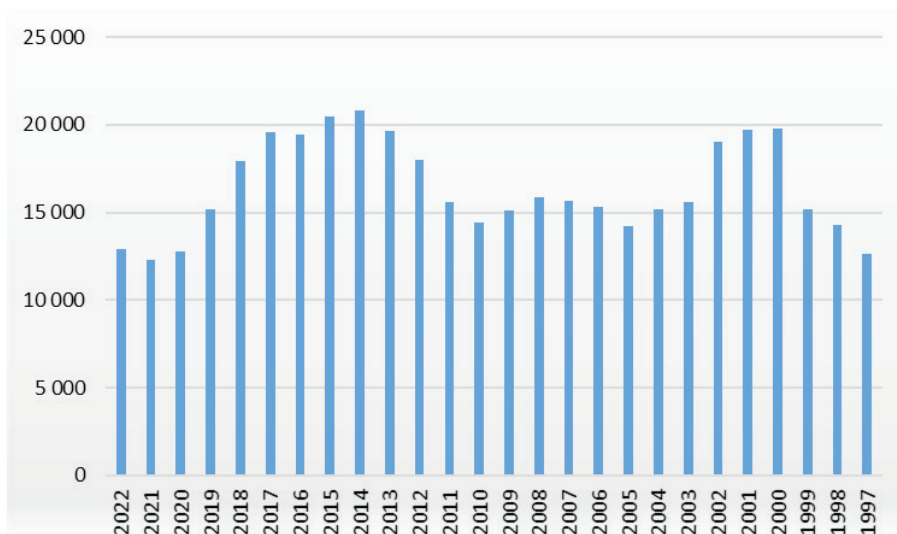
Disappearance of a person

We will begin our analysis of the problem of missing persons by looking at statistical data that illustrate the scale of this phenomenon in Poland at the turn of the 20th century and in the first two decades of the 21st century. The scale of the problem is reflected in police statistics, E. Gruza pointed out: "Every year [...] more than 15,000 of our compatriots are killed at home and abroad, of which as many as $\frac{1}{4}$ are young people and children"¹. Statistics are just statements of numbers, but behind these numbers, there are always human dramas and tragedies, and their common denominator is the need to search for the missing person to find him or her as soon as possible and ensure his or her safety.

¹ E. Gruza, *Genetyka – zaginionym*, in: V. Kwiatkowska-Wójcikiewicz (ed.), *Kryminalistyka dla prawa, prawo dla kryminalistyki*, Scientific Society of Organization and Management "Organizers' House", Toruń 2010, p. 107.

Presented below is a chart reflecting statistics on missing persons in Poland over 25 years.

Fig. 1. Number of reported missing persons from 1997 to 2022



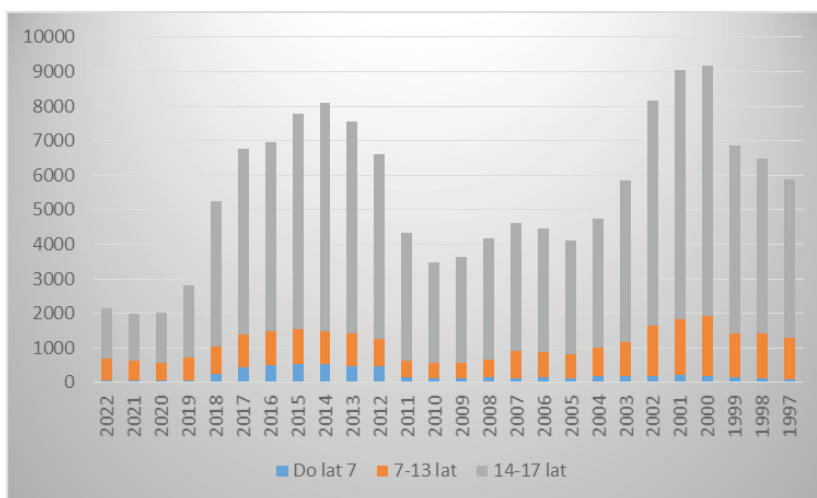
Source: own compilation based on statistics from the Police Headquarters, <https://statystyka.policja.pl/st/wybrane-statystyki/zaginieni/50885,Zaginieni.html> (accessed: 25.09.2023).

The above figures show that in 1997 the number of missing persons in Poland was 12,637. In subsequent years, the number of reports of missing persons increased, with a sharp jump in the number of such incidents between 1999, when 15,196 were reported, and 2000, when the number oscillated around 20,000. From 2003 to 2011, the number fluctuated slightly below or above 15,000. Analyzing statistics from year to year, there has been a marked increase in missing persons since 2012. Data from 2014 and 2015 show an excess of more than 20,000 incidents per year, and in subsequent years there has been a decline in the number of missing persons, with the lowest value recorded in 2020–2021 (12,759 and 12,275, respectively), likely related to the COVID-19 pandemic and the resulting restrictions on being able to stay away from home. The 2022 data indicate that the number of missing persons has increased; admittedly, it is still oscillating around 13,000, which is in a range very close to the 1997 data, but only the sta-

tistics from 2023 and subsequent years will indicate what the dynamics of this phenomenon are.

It is worth reviewing the statistics reflecting the disappearances of children in Poland over the past 25 years, which are presented in the chart below.

Fig. 2. Disappearances of children reported to the police between 1997 and 2022



Source: own compilation based on statistics from the Police Headquarters, <https://statystyka.policja.pl/st/wybrane-statystyki/zaginieni/50885,Zaginieni.html> (accessed: 25.09.2023).

An analysis of the above data clearly shows that in 1997 there were less than 6,000 cases of missing children in Poland, and just three years later, in 2000, the number increased by more than 50%, exceeding 9,000. The phenomenon was at a similar level in 2001, and from 2002, when there were more than 8,000 such incidents, until 2010, there was a marked decline in the number of missing children, as 3469 cases were recorded then, which is significantly less than in 1997. Unfortunately, from 2011 to 2014, the number of these incidents has clearly increased and exceeded the ceiling of 8,000. In subsequent years, the scale of the phenomenon decreased to reach its lowest level (1978) in 2021, which was most likely conditioned by far-reaching restrictions on mobility due to the then-prevailing COVID-19 pandemic. Statistics for 2022 show that the scale of the phenomenon has increased, as the number of missing children reached 2161 that year. Among

children, the largest group of missing were teenagers aged 14–17, which can undoubtedly be linked to escapes from the family home. It is also worth noting one more piece of information from the analyzed statistical data: in the years 2012–2017, a significantly higher number of disappearances of children under the age of 7 was recorded than in earlier and later years. This was most likely related to so-called parental kidnappings.

In conducting further deliberations, it would first be important to note the need to define the term “missing person.” As E. Gruza pointed out: “In Poland, disappearances are an important social problem, but from the point of view of the state as an organization of society with a monopoly on the establishment and execution of laws in a given territory, it is not a very important, and therefore a priority issue. This is because there is no universally applicable legal act that regulates legal issues concerning disappearances. There is no law or ministerial decree. The basic legal act is an order of the police chief, an act that binds only this formation, internally, and departmentally, without affecting other entities, organizations, or institutions. Perhaps this is related to the fact that the authority responsible for conducting searches for missing persons in Poland is the police. There is also no universally applicable legal definition of a missing person.”² In the current Polish legal system, the police have been designated as the authority responsible for conducting searches for missing persons.

Search for missing persons

The findings in question prompted the authors to search legal acts, scientific literature, and Internet resources in order to organize information on the phenomenon known as “missing person”, to define how the phenomenon should be understood, who is a “missing person”, and to check what entities can perform activities in connection with the search for missing persons. The research used the document analysis method.

Returning to the information that shows that the primacy in the search for missing persons is led by the Police, it seems reasonable to refer to the contents of the Police Law³. In Article 14 (1) (3), the legislator indicated that, within the limits of its tasks, the police perform the following activities: operational and exploratory, investigative and administrative-order

² E. Gruza, *Zaginieni czy zagubieni – kilka uwag o prawnych aspektach poszukiwań osób zaginionych w Polsce*, in: T. Kalisz, M. Trzeciński (eds.), *Nowa Kodyfikacja Prawa Karnego*, vol. LVI, University of Wrocław Publishing House, Wrocław 2020, pp. 75–76.

³ Law of April 6, 1990 on the Police (i.e. Journal of Laws 2023, item 171, 2022, item 2600, 2023, item 185, 240, 289, 347, 535, 641, 1088).

activities, to search for persons who, due to the occurrence of an event that makes it impossible to determine their whereabouts, must be found to ensure the protection of their life, health or freedom, hereinafter referred to as “missing persons”. The complex issue of how the police conduct searches for missing persons is undoubtedly regulated by Order No. 48 of June 28, 2018. Chief of Police⁴. In § 2 (1) (1) and (2) of the indicated legal act, a missing person is defined as a person who, as a result of an event that makes it impossible to determine his whereabouts, must be found to ensure the protection of his life, health or freedom. The disappearance of a person is the occurrence of an event that makes it impossible to determine the whereabouts of an individual, requiring that he or she be found or assisted to ensure the protection of life, health, or liberty. However, it should be borne in mind that the aforementioned order applies only to the Police, and the tasks and activities to be performed indicated therein obligate only officers of this uniformed formation. Order No. 48 of the Chief of Police⁵ indicates the levels of search for missing persons, which should be understood as the degree that determines the urgency and scope of undertaking search activities depending on the identified risk of danger to the life, health, or freedom of the missing person:

1. Level I – applies to persons whose disappearance poses an imminent threat to their life, health, or freedom, and the search activities undertaken by the police require the direct and immediate involvement of significant forces and resources on their part; this may include a person:
 - a) a minor under the age of 10,
 - b) a minor between 11 and 13 years old and her disappearance was first reported,
 - c) unable to function independently,
 - d) requiring constant intake of medications that, if not taken, threaten her life,
 - e) a missing person who may be the victim of a real crime against her life or freedom,

⁴ Order No. 48 of the Chief of Police dated June 28, 2018 on the conduct of the police search for a missing person and proceedings in the event of the discovery of a person of undetermined identity or the discovery of unknown remains and human remains (Official Gazette of 2018, item 77 as amended).

⁵ Ibid, § 2(1)(3)(a), (b), (c).

- f) showing a real possibility of committing suicide, and the immediate search activities undertaken by the police will contribute greatly to preventing the act of suicide,
 - g) missing in harsh weather conditions threatening her life.
2. Level II – applies to persons whose disappearance justifies a threat to their life, health, or freedom; this would be, for example, a person:
- a) which once again asserts the commission of a suicide bombing, but also creates the appearance of committing this act by seeking attention,
 - b) a minor between 14 and 18 years old missing for the first time,
 - c) able to function independently, but in need of care, sustained intake of medications, the non-adoption of which threatens his life or health,
 - d) who is missing outside the borders of the Republic of Poland and there is a real reason for the threat to her life, health, or freedom.
3. Level III – applies to persons whose disappearance is not related to an immediate and legitimate threat to their life, health, or freedom, such as persons:
- a) expressing the will to sever contact with family, loved ones or the environment in which she last resided,
 - b) who moved away from her residence as a result of misunderstandings family,
 - c) as to which it is not possible to determine the causes or circumstances of the disappearance,
 - d) with whom there is no contact, and who declared a desire to leave or her disappearance,
 - e) who has left or is staying abroad in the Republic of Poland, does not require constant medical care or constant intake of medication, who has willy-nilly wandered away from care, treatment, or other facility,
 - f) a minor between the ages of 11 and 13 missing once again.

The qualification indicated above systematizes the problem of the police search for missing persons and improves the decision-making process.

As pointed out by M. Jurecka and T. Niedzielski⁶, when dealing with a missing person, four cases of disappearance can be distinguished. First, it refers to a temporary loss of orientation in the area, however, the person

⁶ M. Jurecka, T. Niedzielski, *Poszukiwania osób zaginionych w terenach otwartych. Przegląd stosowanych metod*, "Rozprawy Naukowe Instytutu Geografii i Rozwoju Regionalnego Uniwersytetu Wrocławskiego" 2020, no. 47, p. 46.

wants to be found. The second reason may be the planned hiding of a person who has run away from home or is about to commit suicide. The next case is the influence of a third party when the wanted person is a victim of kidnapping or murder. Another reason may be a sudden fortuitous event that will be tantamount to loss of consciousness. The physical and mental state of a missing person is influenced by environmental factors and personal characteristics.

Comprehensive regulation of the issue of the police's search for missing persons was also discussed by A. Łopuszyński⁷, who referred to the basic definitions arising from the already cited Order No. 48 of June 28, 2018. Chief of Police. In this way, he clearly illustrated the organizational and technical capabilities available to police officers in this regard, namely access to the following collections, databases, or support for ongoing operations:

- a) fingerprint data collection – collections of fingerprint impressions of individuals, unidentified fingerprint traces from crime scenes, and fingerprint traces that may be from missing persons;
- b) collection of booking photos – collections of album cards maintained in accordance with the rules outlined in the regulations on obtaining, processing, and use of information by the Police, as well as ways to establish and maintain collections of such information;
- c) DNA database – a data set containing information on the results of deoxyribonucleic acid analysis, maintained in accordance with Articles 21a-21e of the Police Law;
- d) KSIP – the National Police Information System as defined in § 10 of the Ordinance of the Minister of Internal Affairs and Administration of July 21, 2016, on information processing by the Police (Dz. U., item 1091 and 2018, item 222), the operation of which and the means of processing information and personal data in its data sets are regulated by separate regulations of the Chief of Police on the operation of the National Police Information System;
- e) registration and checking in the KSIP - processing operations performed in the KSIP under the rules outlined in the separate regulations of the Chief of Police on the operation of the National Police Information System;
- f) SIS – Schengen Information System, as defined in Article 2 item 15 of the Act of August 24, 2007, on the participation of the Republic of

⁷ A. Łopuszyński, *Poszukiwania osób zaginionych*, Didactic Materials No. 197, Legionowo Police Training Center, Department of Criminal Service, Legionowo 2020, pp. 8–10.

- Poland in the Schengen Information System and the Visa Information System (Journal of Laws of 2018, item 134 and 138);
- g) KGP office – an organizational unit of the Police Headquarters designated to supervise and coordinate the search for missing persons in the country;
 - h) Child Alert – a system to support the search for abducted and missing minors, aimed at immediately informing as many people as possible about the police search for a minor through interactive media and mass media;
 - i) CPOZ KGP – Center for the Search for Missing Persons of the National Police Headquarters functioning within the bureau responsible for coordinating the search for missing persons, established by Decision No. 147 of the National Police Commander of April 15, 2013, on the Center for the Search for Missing Persons of the National Police Headquarters (Official Journal of the KGP, item 36);
 - j) coordinator of the CPOZ KGP – a person performing official activities at the Center for the Search for Missing Persons of the Police Headquarters;
 - k) provincial coordinator for missing persons – a person designated to provide consultative and advisory support in the search activities carried out in a given province and to cooperate with the CPOZ KGP in the ongoing search for missing persons level I;
 - l) command staff – a team of officers appointed by the head of the police unit or a person authorized by him for the duration of the activation of the Child Alert system;
 - m) administrative-order activity – the activity of checking police and non-police personal data files and places established as the probable whereabouts of the wanted person;
 - n) one-time activity – a search activity undertaken to carry out other than a search order of an authorized body, not subject to registration in the National Police Information System.

Undoubtedly, the police is an entity that has been comprehensively and professionally prepared to conduct searches for missing persons; special attention should be paid to the statutory powers to apply operational control and the ability to use a wide range of data stored in the databases available to officers, which allows for a very rapid analysis of the information obtained and conclusions on the direction, methods, and forms of further search activities since the passage of time from the moment of disappearance is

of key importance – the sooner the optimal steps are taken in a given case, the greater the likelihood of finding the missing person.

The police are, of course, not the only entity performing tasks and activities related to the search for missing persons, although they are the formation in which the tasks in question have been comprehensively formalized. As K. Furman-Łajszczak stated: “Nowadays, in terms of search activities for missing persons, social campaigns run by NGOs (such as ITAKA) play a big role. These organizations draw public attention to the problems faced by the families of missing persons and sensitize the public to the issue of disappearances. Many times, in pursuit of their statutory goals, they cooperate with local government units. Associations and foundations comprehensively help the families of the missing. They have the opportunity to do so thanks to the civic model of our society that we have been striving for since 1989. This would not be possible without appropriate system regulations, relating to the activities of the third sector (its existence is made possible by the provisions of the Polish Constitution relating to political freedoms and rights). Cooperation between the state and representatives of social organizations is a major asset for the future in Poland.”⁸.

In addition to the police and social campaigns and NGOs, search activities for missing persons can also be performed by private detectives, or more specifically, business entities that provide detective services. This was unequivocally explained by P. Łabuz and M. Michalski⁹ in their commentary on the Law on Detective Services. The cited authors pointed out that competency laws are acts that provide the legal basis for the creation of individual special services and police forces, in which fundamental issues concerning the organization and operation of these services are determined, such as the Law on Police. Officers of this service, acting within the limits of their statutory powers (operational, investigative, procedural or administrative and law enforcement), perform official activities similar to those specified in Article 2(1) of the Law on Detective Services, such as the search for missing persons, in which they carry out activities based on a report, while the detective does so based on an order from the family or friends of the missing person. Here we stop at the above justification, which shows that not only the Police have the statutory authority to carry out

⁸ K. Furman-Łajszczak, *Badania DNA z pomocą osobom zaginionym oraz ofiarom konfliktów zbrojnych – możliwość tworzenia baz danych profili DNA przez organizacje pozarządowe*, “Current Problems of Forensic Science” 2014, vol. XVIII, p. 177.

⁹ P. Łabuz, M. Michalski, *Ustawa o usługach detektywistycznych – komentarz*, Difin, Warsaw 2019, pp. 18–19.

activities related to the search for missing persons, which is in accordance with current legal arrangements.

An example of the involvement of private entities in the search for missing persons is the activities carried out by employees of the Lampart Group Detective Agency PLC, headquartered in Warsaw¹⁰, which on November 9, 2017, presented the public with material intended to constitute a reconstruction of the events surrounding the disappearance of Iwona Wieczorek. The disappearance in question is one of the most publicized in Poland in the 21st century, it occurred on the night of July 16–17, 2010 in Gdansk, and the case is still unsolved. Prosecutor Grażyna Wawryniuk, then spokesperson for the District Prosecutor’s Office in Gdansk, said in a statement sent to Wprost.pl editors that all the circumstances presented in the materials sent had been verified and did not lead to a link between the persons indicated and the disappearance of Iwona Wieczorek. Another example of the activities of a private investigator performed in connection with the search for a missing person is the case of the disappearance in October 2016 in Germany of a young Polish woman, Ms. Dorota¹¹. The search case involved Polish detective Arkadiusz Andala, who acted on behalf of members of Polish Facebook groups, also involved in the search for the missing woman. The case of the disappearance was finally solved after seven years, the woman’s corpse was found by German police officers in the house to which the missing woman’s husband Manfred G. had moved with his son and new partner.

Private investigator in search of missing persons

For further consideration, following D. Brakoniecki¹² we will focus on the etiology of the word “detective”, which comes from the Latin word *de-tego* and means to discover, detect, reveal. In English, the term is *detective* or *investigator*, while in German it is *Detektiv* or *Privatdetektiv*. However, in Germany, the most common term for private investigators is *Berufsdetektiv* (professional detective), in Austria – *Privatermittler*. The title of “professional detective” in many countries in Europe, but also in the rest of the globe, as well as in Poland, absolutely belongs to a person with the

¹⁰ <https://www.wprost.pl/tylko-u-nas/10085623/detektywi-twierdza-ze-rozwiklali-tajemnice-zaginiecia-iwony-wieczorek-mamy-komentarz-prokuratury.html> (accessed: 24.09.2023).

¹¹ <https://tvn24.pl/polska/reportaz-uwaga-tvn-zaginiecie-doroty-w-niemczech-cialo-polki-odnaleziono-w-nowym-domu-jej-meza-7342054> (accessed: 23.09.2023).

¹² D. Brakoniecki, *Detektywistyka. Prawne i funkcjonalne aspekty działalności detektywistycznej w Polsce i na świecie*, Difin, Warsaw 2016, p. 26.

appropriate license. In Poland, only private detectives can carry the title of professional detectives, holding a detective's license.

Based on the above sources, it is possible to develop a general view of the understanding of the detective profession in the Polish legal system and socio-economic reality. A detective, as defined by the Law on Detective Services, is a person who has a detective's license and can use the professional title "detective"¹³. Inherent in this concept is the definition of "detective services." As pointed out by G. Gozdór¹⁴, this definition as a statutory one is universally binding. According to the aforementioned law, detective services are activities consisting of obtaining, processing, and transmitting information about persons, objects, and events, carried out based on a contract concluded with the principal, in forms and scopes not reserved for state bodies and institutions under separate regulations, in particular:

1. in matters arising from legal relations involving individuals;
2. in matters arising from business relations concerning:
 - a) performance of property obligations, ability to pay, or reliability in these relations,
 - b) unlawful use of trade names or trademarks, unfair competition, or disclosure of information that constitutes a business secret or trade secret;
3. verifying the reliability of damage information reported to insurance companies;
4. searching for missing persons or those in hiding;
5. property search;
6. collection of information in a case in which criminal proceedings, proceedings in cases of fiscal crimes or fiscal offenses, or other, if the provisions of criminal law can be applied in the course of the proceedings¹⁵.

Interestingly, detective services were defined by G. Gozdór¹⁶, saying that these are activities of collecting information on commission. At the same time, he pointed out that the principal of these activities can be a natural person, a legal person, and an unincorporated entity. Principals may be entrepreneurs or other entities that do not have the status of entrepreneurs,

¹³ Article 4 (3) and (4) of the Law of July 6, 2001 on Detective Services (i.e. Journal of Laws of 2020, item 129).

¹⁴ G. Gozdór, *Usługi detektywistyczne – komentarz*, C.H. Beck Publishing House, Warsaw 2006, p. 36.

¹⁵ Article 2 (1) of the Law of July 6, 2001 on Detective Services (i.e. Journal of Laws of 2020, item 129).

¹⁶ G. Gozdór, op. cit., pp. 38–40 and 48.

including institutions and public bodies. The exception to this is Article 2(2) of the Law on Detective Services, which stipulates that the principal of these activities may not be an authority conducting or supervising criminal proceedings, proceedings in cases of fiscal offenses and fiscal misdemeanors, and others if the provisions of criminal law can be applied in the course of the proceedings. In addition, the aforementioned author noted that in the definition of detective services presented by the legislator, three prerequisites are crucial, two of which should be optionally met to consider the activities in question as a detective service. The first premise relates to the nature of detective activities – these are activities that involve obtaining, processing, and transmitting information about persons, objects, and events. The second, which is also a requirement, is to perform these activities under a contract with the principal. The third prerequisite relates to the implementation of these activities in forms and scopes not reserved for state bodies and institutions under separate regulations. Meeting the first two prerequisites together determines whether an activity can be classified as detective services. The author of the cited commentary to the Law on Detective Services unequivocally stated that: “In assessing the nature of the activity of its possible qualification as an activity performed as part of the detective service, one should also bear in mind such activities listed by example by the legislator as, among others, the search for missing persons [...]”¹⁷. It is worth remembering that an important condition for an activity to be considered an investigative service is that the order taker is oriented towards profit, i.e. the profit-making purpose of the activity. The authors of the commentary to the Law on Detective Services P. Łabuz and M. Michalski¹⁸ pointed out that the scope of detective activities must be carried out based on a contract concluded with the principal. At the same time, they pointed out the fact of concluding a contract with the principal as a constitutive attribute of the detective service within the meaning of the law, in other words, without such a contract, the activities listed in the provision are not “detective services” and the person performing their acts on general principles, so the provisions of the Law on Detective Services do not apply to him.

The legislator has defined detective services, for which the key term is “information”. Its essence is not explained in the cited law, so an encyclopedic definition should be used:

¹⁷ Ibid, p. 39.

¹⁸ P. Łabuz, M. Michalski, *op. cit.*, p. 21.

“Information [Latin *informatio* ‘image’, ‘explanation’, ‘notice’]:

- 1) a concept, basically undefinable due to its primordial, elementary nature; considered most often in three aspects: syntactic (concerns the amount of information that can potentially be contained in a given message), semantic (the meaning and content of the message) and pragmatic (the usefulness of the information, i.e. the value of the information contained in the message due to the purpose pursued by the recipient). There are currently no known universal methods for analyzing information in the semantic and pragmatic sense. In the syntactic sense, information is defined either by the quantity (measure) of information I (information theory) or as a synonym for the term given (data).
- 2) In information theory, $I = \log(1/p) = -\log p$, where p is the probability of an event (or sequence of events) from the set of possible events, an event being, for example, the presence of a certain element of the set – the occurrence of a certain character or letter at a given position of the message being transmitted; the unit of information quantity is the shannon.
- 3) in colloquial language a statement of the state of affairs, a message”¹⁹.

The most popular and general concept of information finds reference in philosophy. Information is a representation of reality in as much detail as possible, more specifically, its objects, events, any phenomena or processes²⁰.

Information is therefore the essence of detective activities since the purpose of detective activity is to obtain, process, and transmit information about persons, objects, and events. According to the authors, information in detective terms can be defined as a message in any form, data, facts, or findings relating to persons who are subjects in detective activities and relation to objects and events of interest to the detective in connection with detective activities performed under a given order. It is worth noting here that the catalog of detective services indicated in Article 2(1) of the Law on Detective Services is not closed, as emphasized by D. Brakoniecki²¹. The legislator used the phrase “in particular”, and the range of services offered by investigators is very wide and is limited only by the law. The catalog of these services is constantly expanding with socioeconomic development, technological advances, and customer needs. Undoubtedly, the most popular assignments usually include spousal infidelity cases, search for missing per-

¹⁹ Retrieved from <https://encyklopedia.pwn.pl/haslo/informacja;3914686.html> (accessed: 05.12.2021).

²⁰ B. Stefanowicz, *Informacja. Wiedza. Mądrość*, Central Statistical Office, Warsaw 2013, pp. 8–9.

²¹ D. Brakoniecki, op. cit., p. 28.

sons, business intelligence and counterintelligence, search for stolen items, detection of wiretaps, checking social contacts of, for example, children, analysis of candidates in the vetting process, etc. Attention to this aspect was drawn by J. Brylak²², who stated that the cited law allows an extremely wide subject range of information that can be obtained by a detective, which includes information about persons, objects, and events. She also stressed that the generic catalog of such information is open, that is, it is exemplary in nature, as evidenced by the legislature's use of the term "in particular." Nevertheless, the catalog in question unambiguously articulates that the search for missing or hiding persons falls within the scope of detective services. When performing detective services referred to in Article 2, paragraph 1, it is not allowed to use technical means and methods and operational and exploratory activities, reserved for authorized bodies under separate legislation²³. Particular attention was paid to this issue by G. Gozdór²⁴, claiming that this provision is of crucial importance for detectives, as it negatively delineates the scope of their powers. The phrase "operational and exploratory activities" is a statutory term that appears in many "police" laws, but has not been statutorily defined. According to J. Widacki, "operational and exploratory activities are most often understood as activities of public order and security authorities (including the Police, Internal Security Agency, Border Guard, Intelligence Agency, Military Police), which are aimed at secretly obtaining information relevant to the implementation of state tasks related to public security and order"²⁵. Undoubtedly, the catalog of operational and reconnaissance activities will include the undisclosed acquisition or seizure of criminal items subject to forfeiture or the manufacture, possession, transportation, or circulation of which is prohibited, the undisclosed giving or receiving of material benefits, undisclosed checks on telephone conversations, undisclosed checks on correspondence. It is significant that P. Łabuz and M. Michalski, in their commentary on Article 7 of the Law on Detective Services, unequivocally stated that "the statutory proviso does not explicitly specify what catalog of operational activities it refers to, and as a matter of interpretation it does not include, however, the methods and means of operational work, also classified as operational

²² J. Brylak, *Ustawa o usługach detektywistycznych – komentarz*, C.H. Beck Publishing House, Warsaw 2016, p. 9.

²³ Article 7 of the Law of July 6, 2001 on Detective Services (i.e. Journal of Laws of 2020, item 129).

²⁴ G. Gozdór, op. cit., p. 74.

²⁵ J. Widacki (ed.), *Kryminalistyka*, C.H. Beck Publishing House, Warsaw 1999, p. 110.

and exploratory activities, such as observation, intelligence, both overt and discreet, or work with personal sources of information, which belong to tactical-criminal activities.”²⁶

On the other hand, the previously cited G. Gozdór²⁷ drew attention to an important term related to operational and exploratory activities, namely the statutory concept of operational control. An example is Article 19(6) of the Police Law of April 6, 1990, according to which operational control is carried out secretly and consists of:

- 1) obtaining and recording the content of conversations conducted by technical means, including through telecommunications networks;
- 2) obtaining and recording images or sound of persons from premises, means of transportation, or places other than public places;
- 3) obtaining and recording the content of correspondence, including correspondence conducted utilizing electronic communication;
- 4) obtaining and recording data contained in computer data storage media, telecommunications terminal equipment, information, and data communications systems;
- 5) gaining access to and controlling the contents of shipments.

The statutory prohibition of the use of technical means and operational and exploratory methods and activities, reserved for authorized bodies under separate regulations, according to J. Wojtal and M. Milewicz²⁸ is one of the most controversial solutions adopted in the Law on Detective Services. The problem is a clear indication of the catalog of operational and exploratory activities that are unavailable to an investigator. This was referred to by T. Aleksandrowicz, J. Konieczny, and A. Konik²⁹, stating that giving an unambiguous answer to the question of what methods a detective can use is very complicated, because, on the one hand, he is given powers that lie in the so-called “countertype field”. Counter-typical field, which consists of the possibility of processing personal data without the consent of the subject, on the other hand, some of the powers within the framework of operational and exploratory activities are public, that is, identical to the powers of any citizen, such as establishing a conversation, observation.

²⁶ P. Łabuz, M. Michalski, op. cit., p. 44.

²⁷ G. Gozdór, op. cit., pp. 77–78.

²⁸ J. Wojtal, M. Milewicz (eds.), *Detektywistyczne usługi – egzamin na licencję*, Scientific Society of Organization and Management “Organizers’ House”, Toruń 2008, p. 64.

²⁹ T. Aleksandrowicz, J. Konieczny, A. Konik, *Podstawy detektywistyki: usługi detektywistyczne, prawo, taktyka, moralność*, Wydawnictwa Akademickie i Profesjonalne, Warsaw 2008, p. 87.

The effectiveness and efficiency of the private detective's activities in the search for missing persons, but also other detective activities, have thus been significantly reduced. The role of the private investigator in the search for missing persons cannot be significant or dominant, if only because of the statutory restrictions on the ability to carry out operational and investigative activities. Against the backdrop of the above considerations, it has been clearly demonstrated that the police have the statutory authority to search for missing persons. Business entities providing detective services under the Detective Services Law also perform activities related to the search for missing persons, which is directly listed in the open catalog of these services. At this point, it should be noted that the activities of the Police and the indicated business entities, related to the search for missing persons, are independent of each other. Of course, ordering a search for a missing person under a contract with a business entity providing detective services is not the same as reporting a missing person filed with a police unit. As noted by D. Brakoniecki³⁰, in Poland, the most common commercial tool for enhancing security in the broadest sense, which is reached for by private individuals, in addition to entities for the protection of persons and property, is precisely detective activity. Of course, the methodology of activities in connection with the search for a missing person undertaken by a detective and by police officers will not be identical, since detectives perform activities within the scope of detective services in forms and scopes not reserved for state bodies and institutions under separate regulations. The authors of the commentary to the Law on Detective Services P. Łabuz and M. Michalski³¹ defined the term "activities reserved for the relevant authorities", which includes in its scope only activities of public authorities undertaken within the limits of statutory authorization (Supreme Court decision of November 28, 2013, ref. I KZP 17/13, Legalis).

Considering the role of the detective in the search for missing persons, it is worthwhile to reflect on whether in this kind of case the detective could cooperate with the police as an equal partner, which seems all the more reasonable since the goal of the activities is common – to find a missing person, and in addition, the police have far broader powers, competencies and capabilities related to the performance of operational and exploratory activities. The issue of the cooperation in question was addressed by D. Brakoniecki³², stating that it assumes only an incidental dimension, even though

³⁰ D. Brakoniecki, *op. cit.*, p. 193.

³¹ P. Łabuz, M. Michalski, *op. cit.*, p. 44.

³² D. Brakoniecki, *op. cit.*, pp. 168–171.

the potential scope of joint areas of activity is relatively wide. At the level of broadly understood security and public order, the area of cooperation and potential interaction between a private detective and the police should be very broad, as it would concern all lawful investigative, analytical, and expert activities, but this does not significantly translate into actual interaction between the indicated entities. The obstacle is primarily the lack of legislation enabling or mandating the establishment of such cooperation, as there are no viable tools in the current state of the law to allow detective agencies to cooperate with police services on an equivalent level. This was unequivocally pointed out by D. Brakoniecki, stating that “[...] the forms of cooperation between detectives and police services do not present themselves very impressively and are reduced only, in certain situations, to the element of notification of certain services”³³. Thus, cooperation is mainly limited to the detective’s fulfillment of his obligations under the law. In this regard, provisions such as Article 240 of the Criminal Code³⁴ (hereinafter referred to as the Criminal Code) and Article 304.1 of the Criminal Procedure Code³⁵ (hereinafter referred to as the Criminal Procedure Code) regarding notification of the criminal preparation, attempt, or commission of a crime indicated in the catalog (legal obligation regarding Article 240 of the Criminal Code) or notification of the commission of a crime prosecuted ex officio (social obligation under Article 304.1 of the Criminal Procedure Code) apply.

Completion

Summarizing the above considerations, it should be unequivocally stated that in the field of searching for missing persons, a private detective is authorized by the Law on Detective Services to perform activities in such cases. However, it is worth recalling that during the search for missing persons, as in the case of other activities within the scope of detective services, the cooperation of the detective with police services is practically non-existent, which is conditioned by the current state of the law, which lacks tools and solutions to undertake and conduct such cooperation and collaboration. Usually, cooperation begins and ends at the same place, that is, when the legal obligation to notify the Police of the conduct of a particular case by

³³ D. Brakoniecki, *op. cit.*, p. 172.

³⁴ Law of June 6, 1997 – Criminal Code (i.e. Journal of Laws 2022, item 1138, 1726, 1855, 2339, 2600, of 2023, item 289, 403, 818, 852, 1234, 1834).

³⁵ Law of June 6, 1997 – Code of Criminal Procedure (i.e. OJ 2022, item 1375, 1855, 2582, 2600, 2023, item 289, 535, 818, 1606).

a private detective service provider is fulfilled, or when a crime report is filed. The beneficiary of this interaction is the Police, although sometimes the purpose of the activities undertaken in the framework of detective services by private operators and under the statutory powers of the Police is the same, it concerns the common good, which is the security of citizens in the broadest sense. There is no doubt that the terms of cooperation between the two entities should change in such a way as to expand the possibilities of detective activity. An example of the level of cooperation between a detective and the police could be to increase the scope of the detective's authority in the sphere of operational and investigative activities, for example, by authorizing him to make checks in police databases, of course, to a certain extent, and in a strictly defined, formalized manner. Similarly, it would be reasonable to introduce the possibility of exchanging information with the police at an agreed level, especially in the case of independently performed activities in identical cases, such as the search for a missing person, when time plays a significant role in ensuring the safety of that person, and his or her health and life or freedom may be at risk. Undoubtedly, the expansion of cooperation between the two entities would require well-thought-out systemic solutions that, on the one hand, would ensure the security of information stored in police databases and eliminate possible abuses, misconduct, or irregularities in this regard, and, on the other hand, could have a positive impact on the effectiveness and efficiency of the activities of both the one and the other entity. Taken as a whole, this would undoubtedly help raise the standard in terms of public safety and order in the broadest sense. Following this line of reasoning, one can venture to say that the possibility of such cooperation and perhaps collaboration would have a positive impact not only on the state of public security but above all on the citizens' sense of security. Against the backdrop of the above considerations, it is worth starting a discussion on this topic, which may lead to legislative changes in the future. At this point, it should be unequivocally stated that the beneficiary of these changes will be the public, able to benefit from professional, comprehensively provided detective services, as well as an even more effective and efficient police force in its operations, supported in the implementation of statutory tasks by the private security sector professionally providing detective services.

Bibliography

Literature

- Aleksandrowicz T., Konieczny J., Konik A., *Podstawy detektywistyki: usługi detektywistyczne, prawo, taktyka, moralność*, Wydawnictwa Akademickie i Profesjonalne, Warsaw 2008.
- Brakoniecki D., *Detektywistyka. Prawne i funkcjonalne aspekty działalności detektywistycznej w Polsce i na świecie*, Difin, Warsaw 2016.
- Brylak J., *Ustawa o usługach detektywistycznych – komentarz*, C.H. Beck Publishing House, Warsaw 2016.
- Furman-Łajszczyk K., *Badania DNA z pomocą osobom zaginionym oraz ofiarom konfliktów zbrojnych – możliwość tworzenia baz danych profili DNA przez organizacje pozarządowe*, “Current Problems of Forensic Science” 2014, vol. XVIII.
- Gozdór G., *Usługi detektywistyczne – komentarz*, C.H. Beck Publishing House, Warsaw 2006.
- Gruza E., *Genetyka – zaginionym*, in V. Kwiatkowska-Wójcikiewicz (ed.), *Kryminalistyka dla prawa, prawo dla kryminalistyki*, Scientific Society of Organization and Management “Organizers’ House”, Toruń 2010.
- Gruza E., *Zaginieni czy zagubieni – kilka uwag o prawnych aspektach poszukiwań osób zaginionych w Polsce*, in: T. Kalisz, M. Trzciniński (eds.), *Nowa Kodyfikacja Prawa Karnego*, vol. LVI, University of Wrocław Publishing House, Wrocław 2020.
- Jurecka M., Niedzielski T., *Poszukiwania osób zaginionych w terenach otwartych. Przegląd stosowanych metod*, “Rozprawy Naukowe Instytutu Geografii i Rozwoju Regionalnego Uniwersytetu Wrocławskiego” 2020, no. 47.
- Łabuz P., Michalski M., *Ustawa o usługach detektywistycznych – komentarz*, Difin, Warsaw 2019.
- Łopuszyński A., *Poszukiwania osób zaginionych*, Didactic Materials No. 197, Legionowo Police Training Center, Department of Criminal Service, Legionowo 2020.
- Stefanowicz B., *Informacja. Wiedza. Mądrość*, Central Statistical Office, Warsaw 2013.
- Widacki J. (ed.), *Kryminalistyka*, C.H. Beck Publishing House, Warsaw 1999.
- Wojtal J., Milewicz M. (eds.), *Detektywistyczne usługi – egzamin na licencję*, Scientific Society of Organization and Management “Organizers’ House”, Toruń 2008.

Sources of law

Law of July 6, 2001, on detective services, consolidated version OJ 2020, item 129.

Law of June 6, 1997 – Criminal Code, i.e. Journal of Laws 2022, item 1138, 1726, 1855, 2339, 2600, of 2023, items 289, 403, 818, 852, 1234, 1834.

Law of June 6, 1997 – Code of Criminal Procedure, consolidated version OJ 2022, item 1375, 1855, 2582, 2600, of 2023, item 289, 535, 818, 1606.

Law of April 6, 1990, on the Police, consolidated version OJ 2023, item 171; 2022, item 2600; 2023, item 185, 240, 289, 347, 535, 641, 1088.

Order No. 48 of the Chief of Police dated June 28, 2018, on the conduct of the police search for a missing person and the procedure in case of revealing a person of unknown identity or finding unknown corpses and human remains, Official Gazette of 2018, item 77 as amended.

Online sources

<https://statystyka.policja.pl/st/wybrane-statystyki/zaginieni/50885,Zaginieni.html> (accessed: 25.09.2023).

<https://encyklopedia.pwn.pl/haslo/informacja;3914686.html> (accessed: 05.12.2021).

<https://www.wprost.pl/tylko-u-nas/10085623/detektywi-twierdza-ze-rozwiklali-tajemnice-zaginiecia-iwony-wieczorek-mamy-komentarz-prokuratury.html> (accessed: 24.09.2023).

<https://tvn24.pl/polska/reportaz-uwaga-tvn-zaginiecie-doroty-w-niemczech-cialo-polki-odnaleziono-w-nowym-domu-jej-meza-7342054> (accessed: 23.09.2023).

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