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REQUIREMENTS FOR BECOMING AN INSTRUCTOR IN THE LIGHT OF CURRENT LEGAL REGULATIONS IN POLAND

WYMOGI UZYSKANIA STATUSU INSTRUKTORA W ŚWIEŁE OBOWIĄZUJĄCYCH W POLSCE REGULACJI PRAWNYCH

Summary

The article addresses requirements for becoming an instructor in Poland. The aim of the author is to stress the consequences of the 2011 reform. The paper describes following conditions: a required time of possession of documents stating a particular kind of eligibility to drive depending on a relevant kind of instructor qualifications; possession of valid certificates on the lack of health and psychological contraindications to perform instructor activities; completion of a relevant instructor course (which has to be certified); pass an exam verifying qualifications before an committee appointed by a voivode; lack of specified convictions which follow from a legally valid court sentence; entry in a register of instructors.

Keywords

driving school, instructor, vehicle

Streszczenie

Niniejszy artykuł dotyczy wymogów, które należy spełnić, aby zostać instruktorem nauki jazdy w Polsce. Autor podkreśla znaczenie reformy z 2011 roku dla podejmowanej tematyki. Praca opisuje następujące warunki: wymagany czas posiadania określonych dokumentów stwierdzających uprawnienie do kierowania w zależności od odpowiednich uprawnień instruktora; posiadanie orzeczenia lekarskiego oraz orzeczenia psychologicznego o braku przeciwwskazań, odpowiednio zdrowotnych i psychologicznych, do wykonywania czynności instruktora; ukończenie z wynikiem pozytywnym kursu dla kandydatów na instruktorów oraz posiadanie zaświadczenia o jego ukończeniu; złożenie z wynikiem pozytywnym egzaminu sprawdzającego kwalifikacje przed komisją powołaną przez wojewodę; brak skazania prawomocnym wyrokiem sądu w określonym zakresie; bycie wpisanym do ewidencji instruktorów.

Słowa kluczowe

szkoła jazdy, instruktor, pojazd

INTRODUCTION

The article addresses requirements for becoming an instructor under the Polish law¹. Until the 2011 reform, which came into force on January 19, 2013, these conditions were stated in art. 105 par. 2 of the road traffic law [the last version before the reform effectiveness: ustawa z dnia 20 czerwca 1997 r. Prawo o ruchu drogowym, Dz. U. 2012 r., poz. 1137 – further: “p.r.d.”]. As for the succeeding regulation, the issue is addressed by art. 33 par. 1 of the act on vehicle drivers [ustawa z dnia 5 stycznia 2011 r. o kierujących pojazdami, Dz. U. 2017, poz. 978 – further “u.k.p.”]. As it can be inferred from the above, the 2011 reform, *inter alia*, relocated instructor-related matters from p.r.d. to u.k.p. However, the lawgiver simultaneously introduced many significant content changes. According to the designers of the reform, it was shaped in such a way as to increase road safety, improve drivers qualifications and minimize fraud, unreliable service and corruption [RM, 2010, p. 1]. As a result, today’s regulation which relates to vehicle drivers is much more extensive than a previous one, which conclusion generally relates also to art. 33 par. 1 u.k.p.²

Undoubtedly, taking into account the subject matter of the paper, it is reasonable to claim that analysis of the abovementioned provision of substantive law should be the main subject of interest. Nonetheless, to become an instructor, a public power has to decide that conditions are fulfilled. Hence, effectively, requirements for becoming an driving instructor are inextricably linked to an administrative procedure. In Poland, this procedure is conducted by a *starosta*³, body placed in the realm of a territorial self-government⁴. According to art. 33 par. 2 point 1 u.k.p., a *starosta* registers as an instructor (*wpisuje do ewidencji*), by way of an administrative decision, for a fee (*za opłatą*) and after payment of the registration fee (*po uiszczeniu opłaty ewidencyjnej*⁵), a person meeting the requirements specified in paragraph 1 points 1–8 (of art. 33 u.k.p.). However, according to point 3 letter a, a *starosta* refuses to register as an instructor (*odmawia wpisu do ewidencji*), through an administrative decision, if the person does not meet the requirements specified in paragraph 1 points 1–8 (of art. 33 u.k.p.). It should be noted that a course of this procedure can differ significantly. For example, as far as a person concerned wants to become an instructor for the first time, she or he has to pass an exam, which can take months⁶. On the other hand, in the case of a person who has been an instructor in the past – and as such can “automatically” fulfill conditions for becoming an instructor at the moment of submitting a relevant motion, except for one – it can be genuinely forthwith⁷.

Today’s conditions for becoming an instructor are stated in art. 33 par. 1 u.k.p. The relevant paragraph comprises 9 points, preceded by an introduction: “an instructor is a person who:...” (*instruktorem jest osoba, która:...*)⁸. However, the first point was removed in its entirety by the amendment which came into force in August 23, 2013⁹.

1. Driving License Or a Permission to Drive a Tram

When it comes to art. 33 par. 1 point 2 u.k.p., it specifies the required time of possession of particular driving license (*prawo jazdy*) category depending on a relevant category of instructor qualifications. As a matter of fact, it provides irresistibly casuistic regulation and one should also bear in mind that it is applicable in the case of becoming an instructor as well as in the case of the extension of instructor qualifications. The required terms of possession of particular driving license category are as follows: at least 2 years for category A (letter a of point 2), at least 2 years for category B (letter b of point 2), at least one year for categories B + E, C1, C1 + E, C, C + E, D1, D1 + E, D or D + E (letter c of point 2) and at least 2 years for category T (letter d of point 2). Nonetheless, in the case of categories A and T, this requirement applies only to instructors who obtain instructor qualifications exclusively with regard to categories A and T, respectively. Moreover, as far as categories B + E, C1, C1 + E, C, C + E, D1, D1 + E, D or D + E are concerned, point 2 demands additionally at least 3 years of experience in conducting training for persons applying for driving license in the field of category B. Thus, it is impossible to become an instructor regarding these categories for a person who becomes an instructor for the first time. As for the point 3 of art. 33 par. 1 u.k.p., it is analogous to the point 2, however, it relates to instructors of persons applying for the eligibility to drive a tram. Accordingly, it is not surprising that the lawgiver demands from them a permission to drive a tram (*pozwolenie na kierowanie tramwajem* – tram counterpart of a driving license). Nonetheless, this condition is combined with the required time of possession of a driving license in the field of category B, which is 2 years. It should be also noted that point 2 and point 3 jointly form equivalent of the former art. 105 par. 2 point 2 of p.r.d., which governed that an instructor is a person who possesses, for a period of at least 3 years, an eligibility to drive vehicles of a type covered by a training. Undoubtedly, the lawgiver is much more talkative today.

2. Medical and Psychological Certificates

As for the art. 33 par. 1 point 4 and 5, they make an instructor status dependant on the sufficient health and psychological condition. Under point 4, an instructor is a person who has a valid medical certificate (*ważne orzeczenie lekarskie*) on the lack of health contraindications to perform instructor activities, while according to point 5, an instructor is a person who has a valid psychological certificate (*ważne orzeczenie psychologiczne*) on the lack of psychological contraindications to perform instructor activities. Again, the lawgiver developed his stance towards this issue comparing to the times under p.r.d. In the past, art. 105 par. 2 point 3 of this statute governed that an instructor is a person who pre-

sented a medical certificate on the lack of health contraindications to drive a vehicle and a psychological certificate on the lack of psychological contraindications to drive a vehicle. As it can be seen, certificates on the lack of health and psychological contraindications to perform instructor activities (*do wykonywania czynności instruktora*) replaced certificates on the lack of health and psychological contraindications to drive a vehicle (*do kierowania pojazdem*). In consequence, today, there is a qualitative difference between medical and psychological examinations demanded to get a driving license (art. 11 par. 1 point 2 letter a u.k.p.) and to become an instructor (art. 33 par. 1 point 4 and point 5 u.k.p.), while in the past the former (previous art. 90 par. 1 point 2 p.r.d.) and the later (previous art. 105 par. 2 point 3) were the same. Unfortunately, it still happens that candidates for instructors submit certificates on the lack of health and psychological contraindications to (merely) drive a vehicle. At no time, can they be accepted, however.

It should be stressed that health and psychological certificates do not work in a “once-and-for-all” manner. Article 34 par. 5 u.k.p. stipulates terms of their validity. Instructors who are under 60 years old should be examined periodically every 5 years (point 1), while instructors who are above 60 years old should be examined periodically every 30 months (point 2). However, there are exceptions from this general rules. Under par. 6, terms of validity may be shortened if a doctor or a psychologist recognize in an examined person medical state indicating the possibility of health contraindications to drive vehicles before the time limits referred to in paragraph 5¹⁰ (incidentally, the construction of art. 34 u.k.p. was criticized by Soboń [Soboń, 2016, p. 138]. What is of importance, there is a direct link between the validity of certificates and the validity of an instructor card (*legitymacja instruktora*). As art. 36 par. 1 governs, a *starosta* issues an instructor card, specifying its validity for the period resulting from the medical and psychological examinations. Additionally, according to art. 36 par. 2, a *starosta* shall extend the period of a card validity for the period resulting from the dates of subsequent medical and psychological examinations.

3. Relevant Instructor Course and Exam

According to art. 33 par. 1 point 6, a person has to complete a relevant course with a positive result and to have a certificate of completion (*ukończyła z wynikiem pozytywnym kurs dla kandydatów na instruktorów i posiada zaświadczenie o jego ukończeniu*). This provision relates only to instructors of persons applying for the right to drive motor vehicles – *pojazdy silnikowe*). It should be stressed that a relevant course – as well as a subsequent exam – are always referred to particular instructor qualifications (e.g. A or B). There is no one “general” instructor course. What seems to be one of the most important

contributions of the 2011 reform, under art. 35 par. 1 point 1 u.k.p. a relevant course is generally organized by driving schools with the certificate confirming the fulfillment of additional requirements (*ośrodek szkolenia kierowców posiadający poświadczenie potwierdzające spełnienie dodatkowych wymagań*), nicknamed as “Super driving schools” [Bałaban, 2010, s. 13]. According to art. 35 par. 2 u.k.p., a relevant course is conducted within the scope of eligibilities of respective driving license categories, however, in the case of extending instructor qualifications, an attendee participates only in the supplementary course. As a matter of fact, the statute provides only a general framework. When it comes to details, the organizer of relevant courses is guided by the regulation of Minister of Infrastructure and Construction of 4 March 2016 on the training of persons who apply for eligibilities to drive vehicles and persons who apply for instructor and lecturer eligibilities [Rozporządzenie Ministra Infrastruktury i Budownictwa z dnia 4 marca 2016 r. w sprawie szkolenia osób ubiegających się o uprawnienia do kierowania pojazdami, instruktorów i wykładowców]. As stated in par. 23 of the aforementioned regulation, the number of hours of theoretical and practical classes for participants of the instructor candidate course or the supplementary course for instructors is determined by a course organizer, but it cannot be less than specified in the table No. 1 (which, however, orders to take into account also the number of hours from table No. 2). It should be added that to participate in the instructor course a person has to already possess medical and psychological certificates (art. 34 par. 5 u.k.p.).

As for point 7 of art. 33 par. 1 u.k.p., it demands to pass an exam verifying qualifications before a committee appointed by a voivode (*złożyła z wynikiem pozytywnym egzamin sprawdzający kwalifikacje przed komisją powołaną przez wojewodę*). It is the ‘next stage’ after the completion of a relevant course for instructors. The point in time between the accomplishment of a relevant course and taking an exam is the time when, in fact, an administrative procedure starts. As a matter of fact, the application for entry in a register of instructors requires to attach the certificate of a relevant course completion. Only then a *starosta* can submit to a voivode an exam motion in regard to a given person. The issue of an exam is outlined in art. 39 u.k.p. and unfolded in the Regulation of the Minister of Infrastructure and Construction of 7 October 2016 on obtaining qualifications by instructors and lecturers, fees and patterns of documents used in these matters, as well as remuneration rates for committee members [Rozporządzenie Ministra Infrastruktury i Budownictwa z dnia 7 października 2016 w sprawie uzyskiwania uprawnień przez instruktorów i wykładowców, opłat oraz wzorów dokumentów stosowanych w tych sprawach, a także stawek wynagrodzenia członków komisji].

4. Unpunishability and Entry in a Register of Instructors

When it comes to art. 33 par. 1 point 8, an instructor is a person who was not convicted by a legally valid court sentence (*nie była skazana prawomocnym wyrokiem sądu*) for: a) crime against communication security; b) crime committed in order to gain a material or personal advantage; c) crime against the credibility of documents; d) driving a vehicle in the state after using alcohol or in the state after using another similarly acting drug; e) intentional crime against life and health; f) crime against sexual freedom and decency. In the times of p.r.d., corresponding provision (art. 105 par. 2 point 6 p.r.d.) demanded only to not be punished by a court verdict for an crime against road safety. Today, neither a conviction has to be connected directly with the road safety, nor it has to be always related to crime. One can reasonably claim that letter b, letter c, letter e and letter f do not require nexus with the road safety. Moreover, in letter d, a word ‘crime’ is not used. Accordingly, it can be also an offense, which view was confirmed in the case law [III SA/Łd 73/14]. Intentions of the lawgiver seem to be clear. The scope of convictions which excludes the possibility of performing instructor activities is much wider than under the rule of p.r.d. It should be also stressed that the issue of being convicted by a valid court sentence is a dynamic one (and, because of an institution of expungement, not always in disadvantage of candidates for becoming an instructor). In my view, as a general principle, a *starosta* should check criminal record of a candidate just before issuance of an administrative decision, notwithstanding an earlier information in this regard. As far as the last point of art. 33 par. 1 u.k.p. is concerned, it governs that an instructor is a person registered as an instructor. This issue is strictly connected with art. 33 par. 2 u.k.p., which was outlined in the introduction. A *starosta* registers as an instructor, through an administrative decision, a person meeting the requirements specified in art. 33 par. 1 points 1–8 u.k.p.

CONCLUSION

The paper addressed the issue of conditions for becoming an instructor in the Polish jurisdiction. The emphasize was put on the fact that the current legal solutions result from the 2011 reform. The author described following requirements which are necessary to acquire instructor status: a required time of possession of documents stating a particular kind of eligibility to drive depending on a relevant kind of instructor qualifications; possession of valid certificates on the lack of health and psychological contraindications to perform instructor activities; completion of a relevant instructor course (which has to be certified); pass an exam verifying qualifications before an committee appointed by a voivode; lack of specified convictions which follow from a legally valid court sentence; entry in a register of instructors.

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NOTES

¹ As far as the legal language is concerned (in the meaning of Polish *język prawny*), the lawgiver does not use the term ‘driving instructor’ (*instruktor nauki jazdy*), but simply “instructor” (*instructor*, the only one exception from art. 39 u.k.p. seems to be an omission). However, in daily language, people consonantly use the former version. To say just „instructor” would plausibly cause the following question: “instructor of what?”.

² One particular aspect of the reform should be quoted at the beginning for a clarity of the further narrative. In Poland, a driving training consists of a theoretical and practical part. In the times of p.r.d., both of them could be conducted by an instructor only. Today, under u.k.p., the lawgiver recognizes also a lecturer (*wykladowca*) as a person who can conduct lessons during a training, however, exclusively as far as a theoretical part is concerned. What is of importance, it does not change the fact that an instructor can still conduct lessons during a training in the scope of both theoretical and practical part.

³ When it comes to instructor-related matters, the nexus with an appropriate *starosta* is provided by a place of residence (*miejsce zamieszkania*) of a particular person, not by an address related to registration residence (*zameldowanie*).

⁴ In Poland, there are three kinds of self-government entities, which are, starting from the smallest: municipality (*gmina*), district (*powiat*) and voivodship (*województwo*). A *starosta* is an executive organ of the second of them. However, when it comes to a county capital (*miasto na prawach powiatu*), which is a special type of municipality, tasks of a *starosta* are performed by a president of the city.

⁵ For now, a registration fee has still not come into force. Under art. 138a u.k.p. it is going to be introduced from June 4, 2018.

⁶ It should be put *explicite* as a matter of accuracy: an exam cannot take place “beyond” an administrative procedure.

⁷ However, an administrative procedure can be relatively long even in such circumstances (e.g. if a file of a given person, who changed her or his place of residence, is possessed by the other *starosta*).

⁸ Article 33 par. 1 states requirements which has to be met not only to become an instructor, but also to keep this status. However, the article does not address ramifications of this second aspect.

⁹ Before this amendment (Novelization No. 10), it had been demanded to possess a secondary education (*średnie wykształcenie*).

¹⁰ Undoubtedly, this provision raises many questions. Why only health, not health and psychological, contraindications? An why only contraindications to drive vehicles, not to perform instructor activities?

