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Legal Analysis of Public Authorities of Chamber for the Development of Slovenian Private Security – *de lege lata* and *de lege ferenda*

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Purpose:

This paper examines the development of delegation of public authorities to the Chamber for the Development of Slovenian Private Security. Based on an evaluation of past and present experiences, the authors set guidelines for future legal regulation and administrative practice.

Design/Methods/Approach:

The research presented here is based on an analysis of legal regulation and theory of public authorities, of the case law of the Constitutional Court of the Republic of Slovenia, and of the administrative inspection reports on implementation of public authorities of former Chamber of the Republic Slovenia for Private Security.

Findings:

Public authorities are institutes of Slovenian constitutional and administrative law. An analysis of sector-specific laws shows that a variety of administrative tasks is delegated to subjects of public and private law (e.g., public enterprises, chambers and individuals).

In practice, the delegation of public authorities poses several major problems: *ex ante,* justifications of delegation are very vague and not supported by analyses, while *ex post* evaluations of delegation are non-existent and supervision of the implementation of public authorities is insufficient. In practice, supervision is mainly the result of malpractice as identified by random checks or the media, and not the result of systematic activity.

The public authorities of professional chambers present a special problem. Public authorities of the former Chamber of the Republic Slovenia for Private Security pertaining to the licensing and professional supervision of members of the chamber have been withdrawn based on findings by administrative inspections.

Research Limitations/Implications:

The research is limited to Slovenia, but the findings are relevant for other "young democracies" in the region and of potential interest to Western European democracies.

Originality/Value:

The analysis addresses key problems in delegating and implementing public authorities, evaluates the results of experiences, and offers possible solutions.

UDC: 351.746.2(497.4)

Keywords: public authorities, private security, chamber, case law, constitutional court, Slovenia

Pravna analiza javnih pooblastil Zbornice za razvoj slovenskega zasebnega varovanja – *de lege lata* in *de lege ferenda*

Namen:

Članek analizira razvoj podeljevanja javnih pooblastil Zbornici za razvoj slovenskega zasebnega varovanja. Na podlagi ocene preteklih in sedanjih izkušenj avtorja predlagata smernice za bodočo pravno ureditev in upravno prakso.

Metode:

Članek temelji na analizi predpisov, pravne teorije, sodne prakse ustavnega sodišča in poročil upravne inšpekcije.

Ugotovitve:

Javno pooblastilo je v slovenskem pravnem redu institut ustavnega in upravnega prava. Analiza področne zakonodaje kaže, da se z javnim pooblastilom prenašajo zelo različne upravne naloge na pravne subjekte javnega in zasebnega prava (npr. javna podjetja, zbornice in posameznike).

Podeljevanje javnih pooblastil ima v praksi številne pomanjkljivosti: *ex ante* gledano so obrazložitve razlogov za podelitev javnih pooblastil zelo splošne in ne temeljijo na analizah, *ex post* gledano pa se ne izvaja evalvacija podeljenih javnih pooblastil, nadzor nad njihovim izvajanjem pa je pomanjkljiv. Nadzor je v praksi večinoma rezultat nepravilnosti, ugotovljenih na podlagi naključnih nadzorov ali objavljenih preko medijev, ne pa sistematične aktivnosti.

Javna pooblastila zbornic z obveznim članstvom predstavljajo poseben problem. Javna pooblastila nekdanje Zbornice Republike Slovenije za zasebno varovanje, ki so se nanašala na podeljevanje licenc in strokovni nadzor, so bila odvzeta zaradi nepravilnosti, ugotovljenih v okviru nadzora upravne inšpekcije.

Omejitve/uporabnost raziskave:

Raziskava je omejena na Slovenijo, rezultati pa so relevantni tudi za druge države iz skupine t. i. mladih demokracij s tega območja, potencialno pa tudi za države Zahodne Evrope.

Izvirnost/pomembnost:

Analiza se nanaša na ključne probleme podeljevanja in izvajanja javnih pooblastil, ocenjuje njihovo prakso in ponuja možne rešitve.

UDK: 351.746.2(497.4)

Ključne besede: javno pooblastilo, zasebno varovanje, zbornica, sodna praksa, ustavno sodišče, Slovenija

1 INTRODUCTION

The public and the private sector do not exist in isolation, but rather interact and cooperate in many forms. One of these forms is so-called public authority. In Slovenia, public authority refers not only to the private sector, as it also encompasses legal entities of public law. One example of the latter are professional chambers with mandatory membership. The aim of this paper is to present the legal regulation and administrative practices of public authorities in Slovenia by using the case Chamber for the Development of Slovenian Private Security.

The public authority to perform certain tasks or duties of state or municipal administration (hereinafter: a public authority) can be granted by law or based on law to a natural person or legal entity that is not an organizational part of state or municipal administration.

From a historical perspective, the transfer of the performance of administrative tasks or duties outside the state administration is linked to the provision of public services in countries with a developed capitalist economy at the end of the 19th century. Public service providers were vested with public authorities in order to ensure that public services could be provided more effectively (Pirnat, 1988).

In Slovenia, a public authority is a constitutional category.[1] The Constitution of the Republic of Slovenia of 1991 with amendments (hereinafter: the Constitution) determines that by law or on the basis thereof, legal entities and natural persons may be vested with the public authority to perform certain duties of the state administration (Article 121 of the Constitution, 1991).[2]

The State Administration Act of 2002 with amendments (hereinafter: ZDU-1) determines that individuals and legal entities under public and private law may be vested with a public authority to perform administrative tasks or duties in the following instances: 1) if thereby more efficient and expedient performance of administrative tasks or duties is provided in comparison to the performance of such tasks by public administration bodies, especially if the performance of such administrative tasks or duties can be entirely or for the most part financed by administrative or user fees; or 2) where permanent and immediate political supervision of the performance of tasks or duties is not necessary or appropriate due to their nature. In the exercise of such a public authority, public authority holders possess the rights and duties of public administration as provided by laws and other regulations.

The Local Self-Government Act of 1993 with amendments (hereinafter: ZLS) takes a similar view of the matter: a municipal regulation may stipulate that a public authority is vested in a public corporation, a public institution, a public agency, a public fund, some other legal entity, or an individual in order for this entity or person to perform individual administrative tasks or duties from the original competence of the relevant municipality if in doing so the more efficient

1 *In comparative law, this is rare (Pirnat, 2001).*

2 *Other provisions of the Constitution (1991) also refer to public authority holders and consider these entities when they perform these duties to be equivalent to state authorities and local community authorities, and when the legal acts which they issue while performing these duties are to be equivalent to the legal acts of state authorities (Articles 2, 22, 25, 26, 64, 120, 121, 153, 155, 157, 159 and 160 of the Constitution, 1991).*

and expedient performance of tasks or duties is provided for, and especially if the performance of such tasks or duties can be entirely or for the most part financed by user fees. If a law allows more than one legal entity or individual to apply for a public authority in this manner, selection should be made based on open competition. In exercising a public authority, public authority holders have the rights and duties of the municipal administration. In reference to the above, the General Administrative Procedure Act of 1999 with amendments (hereinafter: ZUP) determines that the public authority to conduct procedures and decide in administrative matters from the original competence of a self-governing local community is to be granted by an ordinance issued by the council of the self-governing local community (see also Kovač, 2006, 2007).

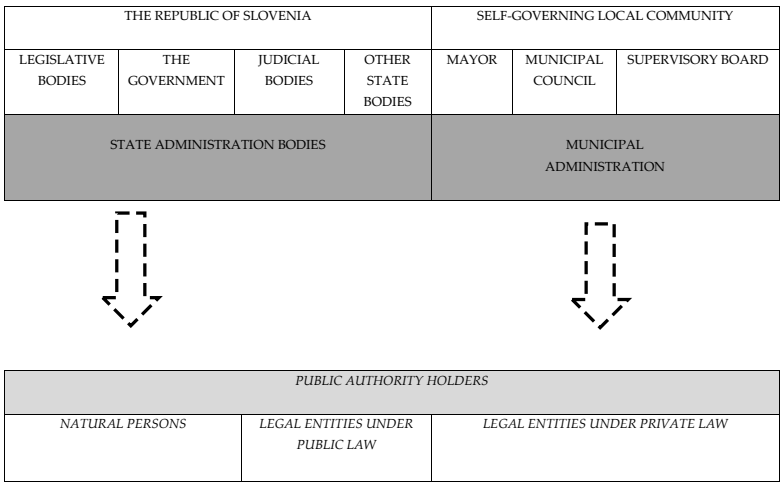


Figure 1: Public authority

It follows from the constitutional and statutory regulations that a public authority has the following elements:

1) the substance of the public authority,
2) the public authority holders,
3) the procedure for granting the public authority,
4) the reason for granting the public authority, and
5) the relationship between the public authority holders and the users of the service.

2 THE SUBSTANCE AND HOLDERS OF PUBLIC AUTHORITIES IN THE REPUBLIC OF SLOVENIA

Neither the Constitution (1991) nor the ZDU-1 (2002) precisely determine which type of administrative tasks or duties may be transferred by granting a public authority; however, it clearly follows from the constitutional provision that not all administrative tasks or duties can be transferred. At first glance, the ZLS (1993) seems somewhat more precise, as it limits public authorities to the so-called original duties of self-governing local communities. On the other hand, it also fails

to provide an answer to the question of which types of administrative duties this entails, except for the duty to conduct administrative procedures. An overview of the relevant sector-specific legislation shows that public authorities comprise very diverse types of tasks or duties, from conducting and deciding in administrative procedures to carrying out professional training (Krivec, 2013). In our opinion, this is due to different standpoints of Slovene legal theorists (Rakar, 2004b; Šturm, 2002; Virant, 2009) and case law of Constitutional Court of the Republic of Slovenia, too.

According to the literature (e.g., Šturm, 2011: 1) not all types of administrative tasks or duties can be transferred, and 2) all administrative tasks or duties of a certain body cannot be transferred as a whole. The case law of the Constitutional Court of the Republic of Slovenia has developed from a narrower to a broader interpretation of the substance of public authority. Krivic (2000) concludes that the Constitutional Court at first primarily interpreted public authorities in the narrowest sense, from the perspective of administrative law, as the issuance of official individual legal acts, and subsequently adopted a broader interpretation, in the sense of the performance of other authoritative as well as unauthoritative tasks or duties of administration.

The Constitution (1991: Article 121) determines that legal entities and natural persons may be vested with public authority.[3] The ZDU-1 (2002) determines the same and specifically mentions public agencies. The ZLS (1993) is more precise, as it specifies public corporations, public institutions, public agencies, public funds, other legal entities, and individuals as possible public authority holders.

Neither the Constitution (1991) nor the ZDU-1 (2002) and ZLS (1993) determine who may not be a public authority holder.[4] About natural persons, restrictions are determined in the relevant sector-specific legislation and mostly refer to requirements regarding citizenship, a clean criminal record, and qualifications to perform certain activities. There are also certain restrictions in the case of legal entities, which primarily apply to legal entities under private law. In the case of legal entities under public law, the situation is different, as a certain portion of these legal entities are established precisely for the purpose of performing tasks or duties on the basis of a vested public authority (e.g., public regulatory agencies), whereas other legal entities under public law are vested with various public authorities because the easier or more expedient performance of the public tasks or duties is the reason they were established (e.g., public institutions performing public services). Regarding the above, self-governing local communities must be excluded from being public authority holders because they are already regulated as such by the Constitution. The transfer to self-governing local communities of the performance of certain tasks or duties performed for the state (so-called transferred duties in the sense of Paragraph 2 of Article 140 and Paragraph 3 of Article 143 of the Constitution, 1991) is therefore not a public authority (Kovač, 2006: 246–250).

3 *Before the amendment in 2006, the provision on public authority holders was somewhat unclear and certain inappropriate terms were applied (e.g., self-governing communities, enterprises, other organisations, and individuals).*

4 *The same, for instance, applies to the German regulation (see Rakar, 2006; Weisel, 2003).*

In practice, typical examples of public authority holders include social service agencies, professional chambers with mandatory membership, public agencies, organizations that perform technical inspections, and ski slope inspectors.

The fact that a public authority is granted by law entails that the law determines not only the tasks or duties to be performed, but also the individual public authority holders. Such a manner of determining public authority holders does not cause problems in practice if only one entity holds a public authority and the public authority is granted for a longer period of time. The situation is different, however, in cases where there are several public authority holders, e.g., in cases where a public authority is vested in a number of natural persons. Therefore, the Constitution (1991) also allows a public authority to be granted by law, which entails that the law must determine 1) the duty or duties, 2) the body granting the public authority, 3) the procedure for granting the public authority, and 4) the requirements that public authority holders must fulfil. In such instances, the public authority is vested in a specific holder by a decision issued in an administrative procedure. In cases where the nature of the matter allows a public authority be granted to only a limited number of legal subjects, all legal subjects must be able to apply for the authority under equal conditions, as otherwise the constitutional principle of equality before the law would be violated (Pirnat, 2001: 278). Accordingly, the ZDU-1 (2002) states that the selection must be made based on open competition if a law allows more than one legal entity or individual to apply for a public authority.

Public authority holders cannot transfer or waive a public authority, as a public authority is the right and duty to perform a specific administrative task or duty (Kovač, 2006: 175). The state may revoke a public authority in the event that the public authority holder is no longer able to fulfil the requirements for the public authority or due to violations when performing the prescribed tasks or duties.

It follows from the ZDU-1 (2002) that the main reasons for granting a public authority are the following: 1) more efficient and expedient performance of administrative tasks or duties is provided in comparison to performance by administrative bodies, especially if the performance of administrative tasks or duties can be entirely or for the most part financed by administrative or user fees, and 2) permanent and immediate political supervision over the performance of tasks or duties is not necessary or appropriate. Pirnat (2001) is of the opinion that the second reason is not clear and underlines that the reasons for vesting a public authority can be the following: 1) the need for efficiency, competent performance, and economic rationality, 2) the need for self-regulation, and 3) the need to ensure independent management. In addition, he emphasizes that the provisions of the ZDU-1 (2002) should only be applied as guidelines and that the relevant legislation based on which a public authority is granted may specify a different reason for granting it.

To summarize the above, the granting of a public authority may be said to entail a tendency towards greater quality and independence in the performance of administrative tasks or duties. The purpose of granting a public authority can be neutrally defined as better performance of administrative tasks or duties and

better functioning of the administrative system. These two potential benefits are not necessarily mutually connected, but this does not mean that improvements in the performance of administrative tasks or duties must be given absolute priority. We feel that the contrary is true, and priority should be given to the improvement of the functioning of the administrative system as a whole.

The relationship between the state and public authority holders is regulated by public law. Certain implementation issues (mostly of a financial nature) can, as an exception, be regulated by a contract, as it was the case with The Chamber of Republic of Slovenia for Private Security in 1990's when Ministry of the Interior co-financed the implementation of public authorities by the chamber.

The state defines the substance of and procedure for vesting a public authority, requirements regarding the authority, and the public authority holders, and supervises the operations of the latter. A ministry carries out supervision over the legality of general and individual legal acts issued for the exercise of public authority (Article 72 of ZDU-1, 2002). A body specified by law decides on an appeal against a decision issued in the first instance by a public authority holder; if the law does not specify such a body, the ministry that has subject-matter jurisdiction decides on the appeal (Article 232 of ZUP, 1999). The competent ministry for administration exercises supervision over the implementation of regulations on administrative functioning (Article 73 of ZDU-1, 2002). The legality of final individual administrative acts is decided on by the administrative court in its procedure for the judicial review of administrative acts (Article 1 of the Administrative Dispute Act of 2006), while the Constitutional Court decides on the conformity of general acts issued for the exercise of public authority with the Constitution (1991), laws, and regulations. The Constitutional Court also decides on violations of human rights and fundamental freedoms by individual legal acts of public authority holders (Article 160 of the Constitution, 1991). The Human Rights Ombudsman also ensures the protection of human rights in relation to public authority holders (Article 1 of the Human Rights Ombudsman Act of 1993).

It is essential for the relationship between public authority holders and users of services that the former have the same rights and duties as the state administration (Article 15 of ZDU-1, 2002) – this primarily entails the duty to respect human rights and fundamental freedoms and the principles that apply to the functioning of state administration. On the other hand, the users of services must be informed of their rights and of the functioning of the public authority holders, and must be given the opportunity to voice their observations and suggestions.

3 PUBLIC AGENCIES AND PROFESSIONAL CHAMBERS AS PUBLIC AUTHORITY HOLDERS

Agencies and other independent regulators are a typical form of public governance found all over the world, especially since the 1990s, when the OECD began heavily promoting them (Kovač, 2012: 157). In Slovenia, public agencies are legal entities of public law regulated by organic law (the Public Agencies Act [ZJA], 2002) and sector-specific legislation (e.g., the Private Security Act [ZZasV],

2003). The first public agencies were established in the early 1990s as independent regulators (e.g., the Securities Market Agency in 1994); later, their numbers grew rapidly (Kovač, 2012; Rakar, 2004a).

Professional chambers with mandatory membership are form of self-regulation. They are established by law and have status of legal entities of public law. In Slovenia they are not regulated by organic law but by sector-specific laws (e. g. the Medical Practitioners Act [ZZdrS], 2006). According to the literature (Kovač, 2006; Virant, 2009), there are two main reasons for establishing chambers of this type: 1) the state provides itself with a representative partner for coordinating or mediating matters that affect members of the chamber, and 2) delegating public authorities. Usually these chambers have the following public authorities: 1) issuing permits or licenses, 2) keeping records, and 3) supervision of performance of members (including disciplinary measures). Delegation of public authorities has its benefits (e.g., enhanced efficiency) as well as its risks – a chamber could perform delegated tasks in the interest of its members and not in the public interest (Virant, 2009: 124).

4 CHAMBER FOR THE DEVELOPMENT OF SLOVENIAN PRIVATE SECURITY

4.1 Introduction

Private security activities entail protecting people and property from destruction, damage, unlawful misappropriation or other harmful effects. These activities constitute the provision of security activities, the rights to which are conferred by the police. The systemic regulation of private security provides for state-regulated protection where it can be effectively and fully guaranteed – police tasks may therefore be entrusted to private security. Private security means that private market actors sell security services to third parties. Security is a fundamental human right. In order to protect the fundamental rights of third parties, the implementation of these activities is limited (Gostič & Kečanovič, 2004: 17–32).

Private security is regulated economic activity which is limited to a certain area (guarded area) and to provision of services for private purposes. The state assignes the providers of these services certain duties, rights and powers by which they may legitimately interfere with human rights and freedoms in the public interest. Private security has developed very quickly in recent years. It started to take on more and more complex tasks, so that its development has taken place both in quantitative and qualitative terms (Modic, Lobnikar, & Dvojmoč, 2014: 232).

The formal beginning of Slovenian private security dates back to 1994 when the Private Protection and Obligatory Organization of Security Services Act was adopted (Modic et al., 2014: 233–234). Private security has gradually become a player in the security market, and the Chamber of the Republic of Slovenia for private security an example of organized interests in the development of security policies, together with the Ministry of the Interior and the strongest Private Security firms (Sotlar, 2001).

The Slovenian private security sector developed through at least three periods, i.e., 1) privatisation of security (1994–2003), 2) consolidation of private security (2003–2007) and 3) policisation of the private security sector (2007–2009) (Sotlar & Meško, 2009: 269). From 2011 to the present, a strong regulation phase is observed (Modic et al., 2014: 235).

The main challenges of contemporary policing in Slovenia remain co-operation between the various organizations of the plural policing family, unification of standards in the field of various policing organizations' powers, and the issue of supervision over their activities (Modic et al., 2014: 217).

4.2 Legal Regulation

In Slovenia, private security was initially regulated by the Private Protection and Obligatory Organization of Security Services Act of 1994 (hereinafter: ZZVO). This ZZVO (1994) was replaced by the Private Security Act of 2003 (ZZasV) and later by the Private Security Act of 2011 (hereinafter: ZZasV-1).

ZZVO (1994) transformed the existing Chamber of Professional Security Services (a legal entity of private law) into the Chamber of the Republic of Slovenia for Private Security, a legal entity of public law[5] with mandatory membership[6] and the following public authorities:[7] 1) issuing and revoking licenses for the provision of private security activities and 2) prescribing and implementing examinations (both types of tasks are to be performed with the consent of the Ministry of the Interior – see Articles 5 and 6).[8] The ZZVO (1994: Article 22) stipulated that the supervision of the implementation of the Act is the authority of the Ministry of the Interior and of the Chamber. If the Ministry determines that a private security provider no longer fulfills the conditions laid down by the Act, it revokes its consent to the license.

According to ZZasV (2003: Article 8 and 9), the Chamber of the Republic of Slovenia for Private Security was a legal entity of public law with mandatory membership. From 2003 to 2007, it performed the following tasks as public authorities: 1) implementing professional education programs, 2) providing

5 *There was no explicit provison in the Act, but this follows from mandatory membership and other legal characteristics.*

6 *This is not a violation of the constitutional right of assembly and association (Decision of the Constitutional Court of the Republic of Slovenia No. U-I-305/94-12 of 3. 4. 1997).*

7 *The Constitutional Court ruled that the process of the transformation of the Chamber was not in accordance with the Constitution (1991) and, consequently, neither was the delegation of public authorities (Decision of the Constitutional Court of the Republic of Slovenia No. U-I-305/94-12 of 3. 4. 1997). As a result, the ZZVO (1994) was later amended - the legislator clearly expressed its intention to grant the previous Chamber the status of legal entity of public law with the public authorities provided by the law (Act Amending Private Protection and Obligatory Organization of Security Services Act [ZZVO-B] of 1998; Decision of the Constitutional Court of the Republic of Slovenia No. U-I-117/98 of 21. 5. 1998).*

8 *Besides these explicitely defined tasks, there were other tasks that were part of public authorities due to their legal nature, e.g., supervising the work of members, monitoring and reviewing the work of the members, adopting a code of professional ethics and taking action in the event of its violation, and keeping several kinds of records (Decision of the Constitutional Court of the Republic of Slovenia No. U-I-305/94-12; Kovač, 2006: 329). In the field of private security, there are two types of public authorities – those of the Chamber and those of the subjects who perform private security activities holders of a license.*

staff, material and spatial conditions and equipment for the implementation of professional education programs, 3) keeping a record of professional education, 4) preparing proposals for catalogs of standards of professional knowledge and skills in accordance with the law governing national vocational qualifications, and 5) proposing members for the verification and certification of national vocational qualifications and performing other tasks stipulated by the law regulating national vocational qualifications. The Chamber was obliged to annualy report on the performance of its public authorities; the minister was obliged to regulate the performance of the public authorities (Rules governing the exercise of public authorities in the field of private security, 2004), and the Ministry of the Interior was obliged to oversee their performance (Article 12 and 14 of the ZZasV, 2003).

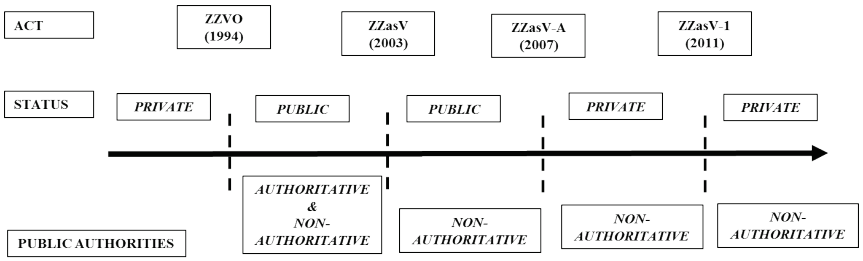
A 2007 amendment to the Act Amending Private Security Act [ZZasV-A] (2007) abolished the Chamber as a legal entity of public law. ZZasV-A (2007) stipulated that members of the Chamber may, within 12 months after the entry into force of the Act, take 1) a decision on the transformation of the Chamber into a chamber in accordance with the law regulating the status and functioning of chambers of commerce, or 2) a decision to abolish the Chamber. ZZasV-A (2007) also withdrew delegated public authorities, listed in the paragraph above (Article 12 of ZZasV) – these tasks were transferred to the Ministry of the Interior (Articles 7, 8, and 42). However, ZZasV-A (2007) determined that professional training and development tasks may be 1) delegated as public authorites to an individual (natural person) or legal entity (legal person) on the basis of open competition, provided these persons fulfill the prescribed conditions (Article 8) or 2) performed by the legal successor of the Chamber, provided it fulfills the prescribed conditions (Articles 8 and 42).

Currently, the Chamber for the Development of Slovenian Private Security (hereinafter: the Chamber) is a legal entity of private law with voluntary membership. According to ZZasV-1 (2011), chambers are one possible form of professional interest groups which advocate the interests of their members, regulate their internal relations, and care for the professionalism and ethics of membership (Article 9). Chambers and other forms of associations may obtain the status of representativeness. The Chamber obtained this status in 2011 by a Decison of the Ministry of the Interior No. 250-432/2011/2-143-08 of June 6th 2011.

The status of representativeness enables its holder to perform certain tasks in the public interest on the basis of delegated public authority. These tasks include: 1) proposing the content of occupational standards and catalogs of knowledge and skills in accordance with the regulations governing national vocational qualifications, education programs, and professional training and care for the development of the education and professional training of security personnel, 2) proposing the content of standards in the private security sector, 3) regularly informing license holders and clients of updates to standards and providing them with the necessary explanations, 4) giving opinions in procedures for recognizing professional qualifications and proficiency to perform tasks in the field of private security, 5) issuing recommendations on quality and professional criteria for security personnel who perform tasks in accordance with the ZZasV-1 (2011) and determining their compliance with professional supervision, 6) preparing joint

reports on the use of measures by security guards, and 7) conducting expert control over the implementation of internal training for license holders (Article 10). The Ministry of the Interior delegates each of these tasks through a decision issued in the administrative procedure. The Chamber performs all the abovementioned tasks and is in this respect a holder of public authorities (http://www.zrszv.si/).

Figure 2: Changes of status of the Chamber and its public authorities



It follows from this overview of the legislation that major changes occured in respect of the status of the Chamber (from legal entity of private law to legal entity of public law and back) and its public authorities (withdrawal of authoritative administrative tasks – e.g., granting licenses) (Figure 2). The main reason for the changes to public authorities were serious breaches of rules uncovered during reviews of administrative inspections in the period between 2001 and 2003.[9] It was found out that 1) the Chamber did not issue licenses by way of administrative procedure as regulated by ZUP, 1999) the Chamber set additional conditions that were not provided by law, and 3) decisions on issuing licenses were taken by the holders of licences (i.e., by direct competitors) (Kovač, 2006).

5 DISCUSSION AND CONCLUSIONS

Licensing is undoubtedly a so-called administrative matter (ZUP, 1999: Article 2) and, consequentely, has to be carried out as an administrative procedure regulated by the ZUP. The ZZVO (1994) lacks an explicit provision on the use of the ZUP (1999), and this could be posited as one reason for the numerous procedural breaches established by the administrative inspection. On the other hand, it is hard to believe that the Chamber was not acquainted with all the relevant rules prior to and after it had begun delegating this public authority. This finding shifts the focus onto supervision of the implementation of public authorities. In our opinion, the system of supervision of the implementation of public authorities is adequate – it is complex and involves 1) formal internal mechanisms (administrative inspection) and formal external mechanisms (legal remedies – courts), as well as 2) informal or *sui generis* external mechanisms (the Ombudsman, the Court of Audit). The problem obviously lies in the implementation of supervision. The use of legal remedies in most cases depends on the will of the party of the administrative procedure. In other cases, supervision depends on internal inspection, which in turn depends on the availabiltiy of resources (especially human and financial)

9 *It is interesting that this reason is not mentioned in the ZzasV (2003) bill.*

and, importantly, on initiatives from interested parties. Namely, annual reports of administrative inspection reveal that in almost all cases, supervision commenced on the initiative of an interested party. Conversely, if there is no initiative, there will, probably, be no supervision. In our opinion, one possible solution is mandatory supervision of statutorily defined entities with public authorities, in particular those that perform especially delicate tasks.[10]

In line with the above, we agree with Kovač (2006) that inadequate legislation and a lack of monitoring and supervision by the ministry led to breaches of the law.[11] The question, however, is whether the withdrawal of public authorities resulted in enhanced effectiveness of the administrative system[12] and – equally or even more important – what the gains of stakeholders in the field of private security are.

The analysis of the development of the legal regulation of the public authorities of the Chamber for the Development of Slovenian Private Security clearly reveals a number of problems inherent in public authorities as legal and administrative institutes in Slovenia: 1) defining the substance, 2) determining the holder, 3) performing supervision, and 4) *ex-post* evaluation. In our opinion, these problems are a consequence of the different standpoints of legal theorists as reflected in the provisions of sector-specific legislation and the case law of the Constitutional Court, and the absence of careful monitoring, supervision, and evaluation of the performance of public authorities (Cf. Modic et al., 2014: 235, 237). All these findings indicate possible improvements, both in general and also, to a considerable degree, in the specific case of the Chamber for the Development of Slovenian Private Security.

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10 *The provisions of the Court of Audit Act of 2001 and 2012 could serve as an example.*

11 *The problems of self-regulation of professional chambers are acknowledged by the Slovenian government, which, in 2014, adopted a programme for the prevention of corruption, reacting to the findings by the Commission for the Prevention of Corruption of the Republic of Slovenia in 2013.*

12 *The problem is that there are no indicators for the evaluation of the effectiveness of the administrative system (Kovač, 2012). Additionally, legislative practice shows that justifications for the delegation of public authorities are very general and vague, while the administrative practice shows that usualy no ex-post evaluation of the achieved goals of the delegation takes place.*

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