

Original article

Legal basis for the functioning of special services in Poland

Marian Kopczewski^{1*} , Zbigniew Ciekanski² , Anna Piotrowska³ 

¹ Faculty of Security Sciences,

General Tadeusz Kościuszko Military University of Land Forces, Wrocław, Poland,

e-mail: marian.kopczewski@awl.edu.pl

¹ Faculty of Economic and Technical Sciences,

Pope John Paul II State School of Higher Education in Biała Podlaska, Poland,

e-mail: zbigniew@ciekanowski.pl

³ Faculty of National Security, War Studies University, Warsaw, Poland,

e-mail: tłumaczeniait@onet.pl

INFORMATIONS

Article history:

Submitted: 16 August 2019

Accepted: 19 May 2020

Published: 15 June 2020

ABSTRACT

The article presents the most important legal acts regulating the activities of special services in Poland in the years 1990-2018.

As part of the political transformation, the Office of State Protection (Polish abbrev. UOP) was set up according to the Act of April 6, 1990. It replaced the previous civil intelligence and counterintelligence. In 2002, the Office was liquidated and replaced the Intelligence Agency (Polish abbrev. AW), and the Internal Security Agency (Polish abbrev. ABW) were established under the Act of May 24, 2002. The AW was created to protect the external security of the state, while the ABW was intended to protect the internal security of the state and its constitutional order. The mentioned Act divided the tasks between those services. Even though preventing and detecting crimes of corruption of public officers was one of the ABW's tasks, the Act of June 9, 2006, established the Central Anti-Corruption Bureau (Polish abbrev. CBA), giving it the status of a special service, although the CBA performs typical police tasks. On the other hand, the Act of June 9, 2006, on the Military Counterintelligence Service (Polish abbrev. SKW) and the Military Intelligence Service (Polish abbrev. SWW) constituted a legal basis for the operation of both services in place of the liquidated Military Information Services (Polish abbrev. WSI).

The article focuses on the services currently operating. The legal regulations constituting the basis for their functioning were analyzed. These are mainly competence acts, to which many amendments were introduced. They resulted, among others, from the implementation of directives and regulations of European institutions, decisions of the Constitutional Tribunal, the introduction of new laws, concerning, e.g., the establishment of the State Protection Service (Polish abbrev. SOP) or changes in the Marshal's Guard's powers. Attention was drawn to numerous ordinances amending the statutes, particularly as regards the ABW, and thus reorganizing the structures of offices.

KEYWORDS

special services, security, democracy, legislation

* Corresponding author



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Introduction

Special services are an essential element of the state security system and should be considered as state institutions whose competences concern broadly defined national security. They operate on the grounds of legal norms that define their organization, tasks, powers, and officers' duties. They stem primarily from national legislation, but Poland's participation in the European Union and specific alliances also influences the shape of the regulations concerning their functioning. The special services' tasks are determined by changes in the security environment and by the government's perception of threats. It is those in power who set the objectives that result from the current alliances and strategies adopted. A special service must have numerous specific powers not conferred on other services to identify and combat or limit threats to the functioning of the state. The services' organization and the drafting of rules of competence must also respect the rights of a democratic state. The purpose of the article is to present the most important legal acts regulating the activities of special services in Poland in the years 1990-2018 and to draw attention to changes resulting from the introduction of new regulations. The analysis of those regulations has been limited to selected aspects, omitting, among others, legal conditions of supervision over the services as a separate article has been devoted to the issue. The publication focuses on the legal regulations concerning special services currently operating in Poland. The study aims to familiarize interested legal persons with the aspects of the special services' activities and point out to various legislative changes.

The beginnings of organizing special services after the political transformation

On April 6, 1990, the Sejm of the Republic of Poland adopted the so-called "police acts", namely, the Act on the Office of the Minister of Internal Affairs [1], the Act on the Police [2], and the Act on the Office of State Protection [3]. The idea of the acts was born in the Social Centre for Legislative Initiatives in Krakow. The Centre presented a social project of three acts: on the Minister of Internal Affairs, on the protection of public security and order, on the security of citizens and authorities competent in these matters, and the change of professional pragmatics, i.e., the Act on the rights and obligations of the Citizen Militia (Polish abbrev. MO) and the Security Service (Polish abbrev. SB). The drafts were submitted on January 19, 1990, to the Sejm. Apart from those social projects, governmental projects were also set forth. All of them were submitted to two parliamentary committees: The Administration and Internal Affairs Commission and the Legislative Commission. On behalf of these committees, three drafts were presented by MP Jerzy Zimowski at the session of the Sejm on April 6, 1990. He stressed that during their work, the subcommittee and the committee firmly assumed that two separate legal acts regulating the situation of the Police and the State Protection Office should be created. That was to be to avoid the situation that the scope of activities and competencies overlap. All three acts created a coherent system:

- the Civic Militia was transformed into the professional, apolitical State Police Force, whose primary and primary objective is to detect and prevent crime,
- the Security Service was dissolved,
- the Ministry of Internal Affairs became the main administrative body, whose tasks included supervision over the policy of the central authorities, i.e., the Police, the

State Protection Office, the Fire Service, and the future Border Guard; the supervision consisted in the fact that the Minister of Internal Affairs supervised the general policy of the central authorities, its compliance with the state policy and human resources policy; he/she also distributed funds between these bodies; he/she had the right to intervene in their activities when authorized to do so by law; the Ministry of Internal Affairs became a civil ministry (until now 90% of the staff have been MO or SB officers); the Political Advisory Committee was introduced to the Ministry as an element of socialization [4, p. 24-34],

- the Office of State Protection was established as a central body with military ranks, with a strictly defined scope of activities, reporting to the Minister of Internal Affairs.

The Office of State Protection replaced Department I and Department II of the Ministry of Internal Affairs, both intelligence and counterintelligence, and also took over the technical services and archives of the liquidated Security Service, whose officers were released. The Council of Ministers established the procedure and conditions for accepting former Security Service officers for service in the UOP [5, p. 388].

Statutory amendments concerning the UOP took place in 1996 [6]. They consisted in separating the UOP from the Ministry of Internal Affairs and subordinating it directly to the Prime Minister, as well as adapting the Office's tasks to new challenges. The Council of Ministers established the College for Special Services as a consultative and advisory body on issues such as the programming, supervision, and coordination of special services (the UOP and the WSI). The new regulations formulated different tasks, adequate to the current threats. Those changes were complemented by the creation of the position of Minister Coordinator of Special Services in 1997. On behalf of the Prime Minister, he/she was to supervise and coordinate the activities of military and civil special services [7, p. 86-92]. Another legal act important for the special services concerned the liquidation of the UOP and the appointment of two agencies in its place.

A new stage in the creation of the Special Services

The legal basis for the Internal Security Agency and the Intelligence Agency was created by the Act of May 24, 2002, on the Internal Security Agency and the Intelligence Agency, which defines, among other things, the organization of the ABW's and the AW's tasks, rules and conditions of service, and the officers' rights and obligations. The Act also obliged the Council of Ministers or the Prime Minister to issue 44 regulations and 3 orders concerning the Intelligence Agency, and 49 regulations and 5 orders regulating the organization and functioning of the Internal Security Agency. The most important of these were the statutes of these Agencies, which defined their internal organization. The Prime Minister granted the statutes to the Intelligence Agency by Order No. 74 of June 26, 2002 [8]. According to it, the AW consisted of ten organizational units and the Training Center of the Intelligence Agency. Subsequent ordinances changed the structure of the AW¹ [See: 9]. According to the statutes in force, since July 3, 2018, the AW was composed of the Operations Department, the Information Department, the Technical Department, the Security Office, the Financial and Administrative Office, the Human Resources and Training Office, the Legal Office, the Head Office and the

¹ Here the AW consisted of 13 Offices.

Independent Department for Crisis Management [10]. The Statutes of the Internal Security Agency was granted by Order No. 73 of the Prime Minister of June 26, 2002 [11]. Under it, the ABW was composed of 31 organizational units, including 15 Delegations (in Białystok, Bydgoszcz, Gdańsk, Katowice, Kraków, Lublin, Łódź, Olsztyn, Opole, Poznań, Radom, Rzeszów, Szczecin, Wrocław, Zielona Góra). By Ordinance No. 75 of the Prime Minister of August 3, 2005, two organizational units were separated from the Department for Counteracting Corruption, Terrorism, and Organized Crime: the Department for Counteracting Corruption and Organized Crime and the Department for Counteracting Terrorism [12]. In the following years, the Ordinance on granting the statutes of the Internal Security Agency was amended many times, thus changing its structure. Reorganizations were carried out in 2006 [13], 2007 [14], 2008 [15, 16], 2011 [17], 2012 [18], 2014² [19], 2016 [20], and 2018³ [21]. The main change introduced by the last-mentioned Ordinance concerning the structure of the ABW was the closure of twelve Delegations. The remaining four (in Białystok, Gdańsk, Katowice, Lublin, and Poznań). After the statutes had been granted, the Heads of the Agency, each in his/her area of competence, gave regulations to the organizational units of each Agency by way of ordinances. They defined in them the internal structure and detailed tasks. The Heads of the Agency, by way of orders, also defined the ways, methods, and forms of performing tasks in each Agency within the scope not covered by the regulations (Article 19 of the Act on the ABW and the AW).

As far as the Internal Security Agency is concerned, the draft implementing provisions to the Act, as government documents, were drafted, agreed upon, and submitted independently by the Internal Security Agency. The Prime Minister finished issuing the orders provided for in the Act on February 26, 2004 [22, p. 12]. The Head of the Intelligence Agency, as the central body of government administration, carried out, with the assistance of the Intelligence Agency, the legislative procedures for 34 draft regulations and 3 executive orders, to the Act on the Internal Security Agency and the Internal Security Agency. The AW's process of issuing regulations was completed in April 2004, with four of them being abandoned [22, p. 14].

In addition to the Act as mentioned above, there are other pieces of legislation governing the activities of the ABW and other Special Services. The most important of these are:

- 1) the Act of August 5, 2010, on the protection of classified information [23], which stipulates that the ABW and the SKW supervise the functioning of the system of classified information in organizational units under their control:
 - they control the protection of classified information and compliance with regulations in force in this respect,
 - perform tasks in the field of ICT system security,
 - carry out security clearance, control clearance proceedings and industrial security proceedings,
 - ensure protection of classified information exchanged between the Republic of Poland and other states or international organizations,
 - provide advice and training on the protection of classified information,
- 2) the Act of June 6, 1997, Code of Criminal Procedure [24], which referred to special services, e.g., in Chapter 25 Retention of Items. Search (handing over of items

² The Statutes constitute an annex to the Announcement.

³ The Statutes constitute an appendix to the Ordinance.

constituting evidence in a case, at the request of a competent authority); in Chapter 26 Control and recording of interviews,

- 3) the Crisis Management Act of April 26, 2007 [25], which defines the authorities competent for crisis management, their tasks, and principles of operation, as well as the principles of financing of crisis management tasks; the meetings of the Crisis Management Team are attended by the government administration bodies appointed by the Chairman of the Team, including the Head of the ABW, the AW, the SKW, the SW, while the Team is composed of the Minister Coordinator of Special Services (if appointed); the established Security Centre cooperates with the Head of the ABW in preventing, counteracting, and dealing with the consequences of terrorist events.

At the end of 2018, the Marshal of the Sejm published the announcement of the consolidated text of the Act on the Internal Security Agency and the Intelligence Agency, together with an annex, which was the consolidated text of the said Act [26]. It took into consideration the changes resulting from the provisions announced before November 23, 2017, and the amendments introduced by the Acts:

- 1) the Act of December 8, 2017, on the State Protection Service [27]; e.g., Article 300, point 1 concerning the Prime Minister, who issues guidelines and demands information and opinions from the Minister in charge of Internal Affairs with regard to the activities of the State Protection Service,
- 2) the Act of January 26, 2018 – the provisions introducing the Act on the Marshal's Guard [28]; e.g., Article 21 points 1 and 2 concerning the College for Special Services, which, as an opinion-making and advisory body, also supervises and coordinates the activities of the Marshal's Guard related to the protection of state security,
- 3) the Act of March 1, 2018, on counteracting money laundering and financing of terrorism [29]; Article 168 extends the application of Article 34a (1) of the Act on the ABW to institutions obliged under the provisions on counteracting money laundering and financing of terrorism,
- 4) the Act of March 6, 2018 – The provisions introducing the Act – Entrepreneurs' Law and other acts concerning business activity [30]; e.g., Article 74 point 2(b) shall read Article 27 (12a) of the Act on the ABW and the AW: "A service provider providing services by electronic means which is a micro-entrepreneur within the meaning of the Act of March 6, 2018. – The Law of Entrepreneurs (Journal of Laws, items 646, 1479, 1629 and 1633) provides technical and organizational conditions that enable the ABW to carry out operational control in accordance with its infrastructure",
- 5) the Act of July 3, 2018 – The provisions introducing the Act on higher education and science [31]; Article 69 (1) of the Act expands the group of people who cannot use the secret cooperation of the Agency. These are rectors and members of the General Council of Science and Higher Education, the Polish Accreditation Committee, and the Council of Scientific Excellence,
- 6) the Act of July 5, 2018, amending the Act on trust services and electronic identification and certain other Acts [32]; e.g., Article 21 (1) of the Act enables the ABW officers to use electronic means of electronic identification containing data other than the identification data of an Agency officer while performing operational and

exploratory activities; Article 21 (3) of the Act obliges the ABW to keep a central register of such means of electronic identification,

7) the Act of July 5, 2018, on the National Cybersecurity System [33]; Article 79 of the Act introduced a provision concerning the implementation by the ABW of the Early Warning System for the threats occurring on the Internet, runs it, and coordinates its functioning,

8) amendments introduced by the Constitutional Court judgment of December 14, 2017, ref. no.: K 17/14 [34];

– Article 23 (1) item 5 of the Act of May 24, 2002, on the Internal Security Agency and the Intelligence Agency (Journal of Laws of 2017, item 1920) in the extent of the powers of ABW officers to carry out personal inspection, without defining the limits of such inspection, is inconsistent with Article 41 (1) and Article 47 in connection with Article 31 (3) of the Constitution,

– Article 23 (7) (1) of the Act on the Internal Security Agency and the Foreign Intelligence Agency in the scope in which it does not provide for judicial control of the legality of performing personal control is inconsistent with Article 45 (1) Article 77 (2) of the Constitution,

– § 29 (1-3) of the Ordinance of the Council of Ministers of April 26, 2005, on the issuing of orders to persons to behave in a specified manner, checking ID, detaining, searching, personal inspection, inspecting luggage and checking cargo, as well as registering events by officers of the Internal Security Agency (Journal of Laws No. 86, item 733) is inconsistent with Article 41 (1) and Article 47 in connection with Article 31 (3) of the Constitution.

The first legal acts concerning the Intelligence Agency indicate that it has been assigned tasks resulting from the need to ensure the protection of the fundamental interests of the state in its international relations, but also related to other threats that arise from socially and politically significant phenomena defined as global threats. The activities of the AW cover a wide range of tasks for the special service. However, its informative and analytical role becomes particularly important [35, p. 74].

Considering the position of the special services, the Internal Security Agency is distinct from other state bodies. Both in relation to the supreme government administration bodies, other special services, and Police bodies. The separation results from statutory properties and a wide range of tasks that are divided into counter-intelligence, of a police nature, and those resulting from the Act on the protection of classified information. The statutory tasks assigned to the ABW about the protection of the constitutional order make it a leading service among the executive authorities [35, p. 72-3].

The legal basis for the operation of the Central Anti-Corruption Bureau is defined in the Act of June 9, 2006, on the Central Anti-Corruption Bureau [36]. It specified the officers' tasks, organization, powers, duties, and rights, and responsibilities. Equally important was the Ordinance No. 111 of the Prime Minister of July 20, 2006, on granting statutes to the Central Anti-Corruption Bureau [37], which established the CBA's organizational units. The statutes given by the Ordinance No. 72 of the Prime Minister of October 6, 2010 [38], were amended by the Ordinance No. 25 of the Prime Minister of March 7, 2019 [39], following which another delegation of the CBA was established in Bydgoszcz. That is the twelfth CBA delegation, and

the others operate in Białystok, Gdańsk, Katowice, Kraków, Lublin, Łódź, Poznań, Rzeszów, Szczecin, Warsaw, and Wrocław. At the moment of setting up the Central Anti-Corruption Bureau, no delegation statutes were created. The Act of August 5, 2010, on the protection of classified information [23] established for the CBA, among other things, that the Prime Minister shall define, by way of an ordinance, the detailed scope, conditions, methods, and procedure of rendering by the CBA of the necessary assistance to the services and institutions authorized to conduct extended clearance, control, and industrial security operations in the performance of activities within the framework of those proceedings (Article 13). In turn, Article 23 of the Act, as mentioned above, defines who conducts extended security screening proceedings against the Head of the CBA, security officers and deputy security officers, and persons envisaged for these positions⁴, and who conducts security screening proceedings against other officers of the CBA⁵. The Act of June 6, 1997, the Code of Penal Procedure, informed, among other things, about the Police's procedural rights, also vested in the CBA officers [24]. The unified text of the Act on the CBA was announced in an appendix to the announcement of the Marshal of the Sejm of October 25, 2018 [40]. It took account of the changes introduced by:

- the Act of December 8, 2017, on the State Protection Service (Journal of Laws of 2018, item 138); Article 312 concerns the benefits which may be received by the family of an officer of the State Protection Service, similarly as in the case of an officer of the CBA and other services,
- the judgment of the Constitutional Tribunal of December 14, 2017, ref. no. K 17/14 (Journal of Laws of 2018, item 2405); the Tribunal recognized Article 14 (1) (5) of the Act of June 9, 2006, on the Central Anti-Corruption Bureau (Journal of Laws of 2017, item 1993) in the scope in which it authorizes the CBA officers to perform personal inspection, without defining the limits of such inspection, is inconsistent with Article 41 (1) and Article 47 in connection with Article 31 (3) of the Constitution; as well as Article 14 (7) (1) of the Act in the scope in which it does not provide for judicial control of the lawfulness of performing personal inspection, as inconsistent with Article 45 (1) and Article 77 (2) of the Constitution; it also recognized § 29 (1-3) of the Ordinance of the Council of Ministers of July 25, 2006, on the issuing of orders to persons to behave in a specified manner, checking ID, detaining, searching, personal inspection, inspecting luggage and checking cargo, as well as registering events by officers of the CBA (Journal of Laws No. 142, item 1014) is inconsistent with Article 41 (1) and Article 47 in connection with Article 31 (3) of the Constitution,
- the Act of January 26, 2018 – The provisions introducing the Act on the Marshal Guard (Journal of Laws No. 730); Article 26 concerns the benefits which may be received by the family of a Marshal Guard officer, similarly to the officer of the CBA and other services (the article entered into force on April 14, 2020),
- the Act of March 6, 2018 – The provisions introducing the Act – The Entrepreneurs' Law and other acts concerning business activity (Journal of Laws item 650); e.g., Article 110 (2a) introduces the following provision to the Act on the CBA in Article 17 (12a): "A service provider providing services by electronic means who is a micro or small enterprise within the meaning of the provisions of the Act of March 6,

⁴ These proceedings are conducted by the ABW.

⁵ The Head of the CBA is responsible for the examination proceedings against its own officers.

2018 – the right of entrepreneurs (Journal of Laws No. 646, 1479, 1629 and 1633) provides technical and organizational conditions which enable the CBA to conduct operational control in accordance with its infrastructure,

- the Act of July 3, 2018 – The provisions introducing the Act on higher education and science (Journal of Laws 1669); e.g., Article 97 (1) expands the group of persons, who cannot benefit from secret cooperation, by the rectors, members of the General Council of Science and Higher Education, the Polish Accreditation Committee and the Council of National Excellence; Article 97 (2) stipulates that the Head of the CBA may permit an officer to perform, outside of service, a paid activity of an academic, didactic, didactic-research, or research character, if it does not interfere with the performance of his/her official tasks and does not harm the good of the service,
- the Act of July 5, 2018, on the amendment of the Act on trust services and electronic identification and certain other acts (Journal of Laws No. 1544); e.g., Article 30 (1) enables the CBA officers in the course of performing operational and exploratory activities to use means of electronic identification containing data other than the data identifying the officer of the CBA,
- the Act of July 5, 2018, on the amendment of the Act on public-private partnership and certain other acts (Journal of Laws 1693); e.g., Article 16 (1) of the Act extends the scope of the CBA's activities by controlling the correctness of the performance of agreements on public-private partnership,

and changes resulting from the regulations before October 22, 2018.

The judgment of the Constitutional Tribunal of June 23, 2009 [41], stating, among other things, that Article 1 (3) of the Act on the CBA to the extent that it considers the conduct of any person who does not perform a public function as corruption in the private sector, without narrowing this definition through socially harmful reciprocations, is inconsistent with Article 2, Article 22, and Article 31 (3) of the Constitution of the Republic of Poland, was significant. Also, Article 40 of the Act, to the extent that it allows the inspection of real estate or other assets without specifying the manner of use and storage of the data obtained in this way, in particular concerning third parties, not obliged to submit declarations of assets, was considered inconsistent with Article 47 and Article 50 in connection with Article 31 (3) of the Constitution.

In recent years, one of the basic directions of the CBA's activities is to combat economic crime, particularly the extortion of VAT and funds from EU funds. Within the framework of its analytical and information activities, the Bureau also prepares analytical studies and presents them to competent authorities and institutions. While performing statutory tasks, the CBA verifies asset declarations of persons performing public functions⁶.

The statutory legal basis for the establishment of Military Information Services was introduced by the Act of October 25, 1991, amending the Act on the universal obligation to defend the Polish People's Republic and some other acts [42]. The Act defines the obligations of the Military Information Services, indicating that they include tasks related to recognizing and counteracting threats to state defense and violations of state secrets in the defense field. In 2003, The Sejm adopted the Act of July 9, 2003, on Military Information Services [43], which

⁶ Detailed data on the results of the CBA activity can be obtained based on the Information on the results of the CBA activity on the website www.cba.gov.pl. *Informacja o wynikach działalności CBA*, [online]. Centralne Biuro Antykorupcyjne. Available at: <https://www.cba.gov.pl/pl/antykorrupc/informacja-o-wynikach>.

for the first time comprehensively regulated the activities of military intelligence and counterintelligence, and the Ordinance No. 21/MON of July 30, 2004, gave the statutes defining organizational units and cells [44]. The Military Information Services also operated based on the Act on the protection of classified information of January 22, 1999 [45].

The Act of June 9, 2006, "Provisions introducing the Act on Military Counter-Intelligence Service and Military Intelligence Service and the Act on the Service of Military Counter-Intelligence Service and Military Intelligence Service Officers" [46] liquidated the Military Information Services, at the same time being one of the first legal acts relating to the Military Counter-Intelligence Service and Military Intelligence Service. It obliged, among others, the Minister of National Defense to appoint the Liquidation Commission and the Verification Commission, and defined the tasks of these commissions and the manner of appointing their members and chairpersons. The Act of June 9, 2006, on the Military Counterintelligence Service and the Military Intelligence Service [47] constitutes the legal basis for the functioning of both services. It defines, among others, their objectives and tasks, subordination, powers of officers, corps, and military ranks. The Minister of National Defense granted the statutes of the Military Intelligence Service by the Ordinance of May 28, 2008 [48], and the Military Counterintelligence Service by the Ordinance of the Minister of National Defense of October 20, 2006 [49]. Currently, the Ordinance of the Minister of National Defense of June 13, 2018 [50], amending the Ordinance on granting the statutes to the Military Intelligence Service, The Act of June 9, 2006 [51], on the service of Military Counter-Intelligence Service officers and Military Intelligence Service, specifies, among others, the principles of establishing an official relationship, the course of service, duties, and rights, and disciplinary responsibility of the SKW and SWW officers. The unified text of the Act on Military Counterintelligence Service and Military Intelligence Service was attached to the announcement of the Marshal of the Sejm of September 28, 2017 [52]. It took account of the changes introduced:

- the Act of November 16, 2016, amending the Act on the universal obligation to defend the Republic of Poland and certain other acts (Journal of Laws, item 2138),
- the Act of December 1, 2016, on the amendment of certain acts in the area of safety and hygiene of service (Journal of Laws, item 1955),
- the Act of March 23, 2017, amending the Act – the Penal Code and certain other acts (Journal of Laws, item 768),

and changes resulting from the provisions announced before September 26, 2017.

The Annex to the announcement of the Marshal of the Sejm of March 20, 2019, on the announcement of the consolidated text of the Act on Military Counterintelligence Service and Military Intelligence Service [53], included the changes introduced:

- the Act of March 6, 2018 – The provisions introducing the Act – Entrepreneurs' Law and other acts concerning business activity (Journal of Laws item 650); Article 111 introduces the following provision: "A service provider providing services by electronic means that is a micro or small enterprise within the meaning of the Act of March 6, 2018 – The Act of Entrepreneurs (Journal of Laws items 646, 1479, 1629, 1633, and 2212) provides technical and organizational conditions that enable the SKW to carry out operational control according to its infrastructure,
- the Act of July 3, 2018 – The provisions introducing the Act on higher education and science (Journal of Laws, item 1669); Article 98 expands the group of persons by

rectors, members of the General Council and Higher Education, the Polish Accreditation Committee and the Scientific Excellence Council whose secret cooperation the SKW and the SWW cannot use,

- the Act of July 5, 2018 on the amendment of the Act on trust services and electronic identification and certain other acts (Journal of Laws of July 5, 2018, item 1544); e.g., pursuant to Article 31 (1), when performing operational and exploratory activities, the SKW and SWW officers may use electronic means of identification containing data other than the data identifying the SKW or SWW officer respectively,
- the Act of November 22, 2018, on public documents (Journal of Laws of 2019, item 53); e.g., Article 66 (2) introduces the following provision: “The SWW, for the needs of authorized state bodies, services, and institutions, prepares and issues public documents referred to in Article 5 (2) (16-20) and (32g, h) of the Act of November 22, 2018, on public documents and other military documents as well as the SKW and SWW documents, which make it impossible to establish the identification data of soldiers, officers, or employees of these bodies, services, and institutions, persons assisting them in the performance of operational and exploratory activities, and the means they use in the performance of their official tasks, as well as the register of these documents. Drawing up and issuing documents for the needs of bodies, services, and institutions other than the SKW takes place at their request”⁷,
- the Act of December 14, 2018, amending the Act on the Police and certain other acts (Journal of Laws of December 14, 2018, item 2399); e.g., Article 9 (1) states that officers performing tasks in the scope of protection within the boundaries of protected areas and facilities have the right to carry out preventive checks, as well as check baggage, means of transport, and cargo,
- the Act of December 14, 2018, on the protection of personal data processed in connection with preventing and combating crime (Journal of Laws of 2019, item 125); Article 79 introduces the following provision: “Within the scope of their competence, the SKW and the SWW may collect, also secretly, all personal data, including, if it is justified by the nature of the tasks performed, the data indicated in Article 14 (1) of the Act of December 14, 2018, on the protection of personal data processed in connection with preventing and combating crime (Journal of Laws of 2019, item 125), as well as to use personal data and other information obtained as a result of performing operational and exploratory activities by authorized authorities, services, and state institutions, and process them without the knowledge and consent of the data subject”,

and amendments resulting from provisions announced before March 12, 2019, e.g., the judgment of the Constitutional Tribunal of December 14, 2017, ruling on the inconsistency of Article 44 (2) (5) of the Act of June 9, 2006, on the Military Counterintelligence Service and Military Intelligence Service (Journal of Laws of 2017, item 1978) to the extent to which it entitles the officers of the Military Counterintelligence Service and the Military Intelligence Service to carry out personal control, without defining the limits of such control, with Article 41 (1), and Article 47 in connection with Article 36 (1) of the Constitution; as well as inconsistency in the extent to which it does not provide for the judicial control of the legality

⁷ The aforementioned Act entered into force on July 12, 2019.

of the activities of the officers of the Military Counterintelligence Service and the Military Intelligence Service with Article 45 (1) and Article 77 (2) of the Constitution [34].

The already mentioned Act of December 14, 2018, amending the Act on the Police and certain other acts deserves attention not only due to the aforementioned amendments to the Act on the SKW and the SWW, but also to the Act on the ABW and the AW, and the Act on the CBA. The changes introduced in the last two acts concern:

- personal control (it was specified, among others, what personal control consists in, how it should be conducted, when a protocol is drawn up, what duties the officer conducting control has, what rights the controlled person is entitled to),
- preventive control (it was specified what preventive control consists in, also with regard to persons detained, led or escorted, how such control is carried out),
- checking the contents of baggage or cargo in ports, stations, or other places of check-in for passengers or baggage and in means of land, air and water transport (what the search consists in, in whose presence is conducted, what right the officer carrying out these activities has, what rights are vested in the holder of baggage or cargo).

Amendments were introduced to the Act of May 24, 2002, on the Internal Security Agency and the Intelligence Agency (Journal of Laws of 2018, items 2387 and 2245)⁸ [26, 54], the Act of June 9, 2006, on the Central Anti-Corruption Bureau (Journal of Laws of 2018, item 2104)⁹ [40] and the Act of June 9, 2006, on the Military Counterintelligence Service and Military Intelligence Service (Journal of Laws of 2017, item 1978 and of 2018, items 650, 1544, and 1669)¹⁰ [30, 31, 32, 52].

It is worth noting the numerous legislative changes introduced in the examined area and the need for systemic changes. For years, the multiplicity of special services, overlapping of their competences, and the lack of legal definition of special services have been pointed out. The necessity for each service to have separate acts is indicated.

Conclusion

The effective functioning of special services in a democratic state presents many challenges for those in power. They also concern the legislative sphere at the stage of creating special services, assigning tasks, and functioning. Special services must operate effectively, respecting the rules of democracy. Their actions must not interfere with the state's need to ensure civil liberties. The legislative processes in the initial period of Poland's political transformation, when new special services were created, were very significant. Attention should be paid to the social factor that played an important role at that time. The idea of laws was born in the Social Center for Legislative Initiatives in Cracow, and three social projects were submitted in the Sejm. Their intention to avoid a possible overlap in the scope of activities and competencies was also significant. That was unavoidable nowadays, not only the multitude of special services but also overlapping competences. The analysis of legal regulations indicates respect for the principles of a democratic state. That is evidenced by the judgments of the Constitutional Tribunal and the directives of EU institutions. Frequent reorganization of

⁸ Consolidated text.

⁹ Consolidated text.

¹⁰ Consolidated text.

individual special services (as evidenced by numerous ordinances changing organizational units of the services) may disorganize and increase their operational effectiveness. It should also be noted that the role of some services is limited by the liquidation of their organizational units and the strengthening of others' roles.

Acknowledgement

No acknowledgement and potential founding was reported by the authors.

Conflict of interests

All authors declared no conflict of interests.


Author contributions

All authors contributed to the interpretation of results and writing of the paper. All authors read and approved the final manuscript.

Ethical statement

The research complies with all national and international ethical requirements.

ORCID

Marian Kopczewski  <https://orcid.org/0000-0002-0402-0477>

Zbigniew Ciekankowski  <https://orcid.org/0000-0002-0549-894X>

Anna Piotrowska  <https://orcid.org/0000-0002-0043-7726>

References

1. Ustawa z dnia 6 kwietnia 1990 r. o urzędzie Ministra Spraw Wewnętrznych (Dz. U. z 1990 r. Nr 30, poz. 181).
2. Ustawa z dnia 6 kwietnia 1990 r. o Policji (Dz. U. z 1990 r. Nr 30, poz. 179).
3. Ustawa z dnia 6 kwietnia 1990 r. o Urzędzie Ochrony Państwa (Dz. U. z 1990 r. Nr 30, poz. 180).
4. Zimowski J. *Wystąpienie parlamentarne z dnia 6 kwietnia 1990 r.* Przegląd Bezpieczeństwa Wewnętrznego – wydanie specjalne. 2010.
5. Opaliński B, Rogalski M, Szustakiewicz P. *Ustawa o Agencji Bezpieczeństwa Wewnętrznego oraz Agencji Wywiadu. Komentarz.* Warszawa: Wydawnictwo C.H. Beck; 2017.
6. Ustawa z dnia 8 sierpnia 1996 r. o zmianie niektórych ustaw normujących funkcjonowanie gospodarki i administracji publicznej (Dz. U. z 1996 r. Nr 106, poz. 496).
7. Misiuk A. *Ewolucja cywilnych służb specjalnych w Polsce.* Przegląd Bezpieczeństwa Wewnętrznego – wydanie specjalne. 2010.
8. Zarządzenie nr 74 Prezesa Rady Ministrów z dnia 26 czerwca 2002 r. w sprawie nadania statutu Agencji Wywiadu (M.P. Nr 26, poz. 433).
9. Zarządzenie Nr 68 Prezesa Rady Ministrów z dnia 3 czerwca 2016 r. zmieniające zarządzenie w sprawie nadania statutu Agencji Wywiadu (M.P. z 2016 r. poz. 493).
10. Zarządzenie nr 106 Prezesa Rady Ministrów z dnia 3 lipca 2018 r. zmieniające zarządzenie w sprawie nadania statutu Agencji Wywiadu (M.P. z 2018 r. poz. 660).
11. Zarządzenie Nr 73 Prezesa Rady Ministrów z dnia 26 czerwca 2002 r. w sprawie nadania statutu Agencji Bezpieczeństwa Wewnętrznego (M.P. Nr 26, poz. 432).

12. Zarządzenie Nr 75 Prezesa Rady Ministrów z dnia 3 sierpnia 2005 r. zmieniające zarządzenie w sprawie nadania statutu Agencji Bezpieczeństwa Wewnętrznego (M.P. Nr 46, poz. 634).
13. Zarządzenie Nr 33 Prezesa Rady Ministrów z dnia 15 marca 2006 r. zmieniające zarządzenie w sprawie nadania statutu Agencji Bezpieczeństwa Wewnętrznego (M.P. Nr 21, poz. 241).
14. Zarządzenie nr 31 Prezesa Rady Ministrów z dnia 29 marca 2007 r. zmieniające zarządzenie w sprawie nadania statutu Agencji Bezpieczeństwa Wewnętrznego (M.P. Nr 21, poz. 243).
15. Zarządzenie Nr 2 Prezesa Rady Ministrów z dnia 8 stycznia 2008 r. zmieniające zarządzenie w sprawie nadania statutu Agencji Bezpieczeństwa Wewnętrznego (M.P. Nr 3, poz. 36).
16. Zarządzenie Nr 102 Prezesa Rady Ministrów z dnia 17 września 2008 r. zmieniające zarządzenie w sprawie nadania statutu Agencji Bezpieczeństwa Wewnętrznego (M.P. Nr 69, poz. 622).
17. Zarządzenie Nr 39 Prezesa Rady Ministrów z dnia 17 czerwca 2011 r. zmieniające zarządzenie w sprawie nadania statutu Agencji Bezpieczeństwa Wewnętrznego (M.P. Nr 57, poz. 572).
18. Zarządzenie Nr 110 Prezesa Rady Ministrów z dnia 19 grudnia 2012 r. zmieniające zarządzenie w sprawie nadania statutu Agencji Bezpieczeństwa Wewnętrznego (M.P. poz. 1007).
19. Obwieszczenie Prezesa Rady Ministrów z dnia 23 grudnia 2013 r. w sprawie ogłoszenia jednolitego tekstu zarządzenia Prezesa Rady Ministrów w sprawie nadania statutu Agencji Bezpieczeństwa Wewnętrznego (M.P. z 2014 r. poz. 203).
20. Zarządzenie Nr 42 Prezesa Rady Ministrów z dnia 31 marca 2016 r. zmieniające zarządzenie w sprawie nadania statutu Agencji Bezpieczeństwa Wewnętrznego (M.P. poz. 315).
21. Zarządzenie Nr 163 Prezesa Rady Ministrów z dnia 26 września 2018 r. w sprawie nadania statutu Agencji Bezpieczeństwa Wewnętrznego (M.P. poz. 927).
22. Najwyższa Izba Kontroli. Departament Obrony Narodowej i Bezpieczeństwa Wewnętrznego. *Informacja o wynikach kontroli organizacji służb specjalnych oraz nadzoru nad nimi*. Warszawa: NIK; listopad 2005.
23. Ustawa z dnia 5 sierpnia 2010 r. o ochronie informacji niejawnych (Dz. U. Nr 182, poz. 1228 z późn. zm.).
24. Ustawa z dnia 6 czerwca 1997 r. – Kodeks postępowania karnego (Dz. U. z 1997 r. Nr 89, poz. 555 z późn. zm.).
25. Ustawa z dnia 26 kwietnia 2007 r. o zarządzaniu kryzysowym (Dz. U. z 2007 r. Nr 89, poz. 590).
26. Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 23 listopada 2018 r. w sprawie ogłoszenia jednolitego tekstu ustawy o Agencji Bezpieczeństwa Wewnętrznego oraz Agencji Wywiadu (Dz. U. z 2018 r. poz. 2387).
27. Ustawa z dnia 8 grudnia 2017 r. o Służbie Ochrony Państwa (Dz. U. z 2018 r. poz. 138).
28. Ustawa z dnia 26 stycznia 2018 r. – Przepisy wprowadzające ustawę o Straży Marszałkowskiej (Dz. U. poz. 730).
29. Ustawa z dnia 1 marca 2018 r. o przeciwdziałaniu praniu pieniędzy oraz finansowaniu terroryzmu (Dz. U. poz. 723).
30. Ustawa z dnia 6 marca 2018 r. – Przepisy wprowadzające ustawę – Prawo przedsiębiorców oraz inne ustawy dotyczące działalności gospodarczej (Dz. U. poz. 650).
31. Ustawa z dnia 3 lipca 2018 r. – Przepisy wprowadzające ustawę – Prawo o szkolnictwie wyższym i nauce (Dz. U. poz. 1669).
32. Ustawa z dnia 5 lipca 2018 r. o zmianie ustawy o usługach zaufania oraz identyfikacji elektronicznej oraz niektórych innych ustaw (Dz. U. poz. 1544).
33. Ustawa z dnia 5 lipca 2018 r. o krajowym systemie cyberbezpieczeństwa (Dz. U. poz. 1560).
34. Wyrok Trybunału Konstytucyjnego z dnia 14 grudnia 2017 r. sygn. akt K 17/14 (Dz. U. poz. 2405).
35. Grzegorzowski Z. *Służby specjalne a bezpieczeństwo państwa polskiego*. Toruń: Wydawnictwo Naukowe Grado; 2013.

36. Ustawa z dnia 9 czerwca 2006 r. o Centralnym Biurze Antykorupcyjnym (Dz. U. Nr 104, poz. 708 z późn. zm.).
37. Zarządzenie Nr 111 Prezesa Rady Ministrów z dnia 20 lipca 2006 r. w sprawie nadania statutu Centralnemu Biuru Antykorupcyjnemu (M.P. z 2006 Nr 49, poz. 527).
38. Zarządzenie Nr 72 Prezesa Rady Ministrów z dnia 6 października 2010 r. w sprawie nadania statutu Centralnemu Biuru Antykorupcyjnemu (M.P. Nr 76, poz. 953).
39. Zarządzenie nr 25 Prezesa Rady Ministrów z dnia 7 marca 2019 r. zmieniające zarządzenie w sprawie nadania statutu Centralnemu Biuru Antykorupcyjnemu (M.P. poz. 259).
40. Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 25 października 2018 r. w sprawie ogłoszenia jednolitego tekstu ustawy o Centralnym Biurze Antykorupcyjnym (Dz. U. z 2018 r. poz. 2104).
41. Wyrok Trybunału Konstytucyjnego z 23 czerwca 2009 r. sygn. akt K 54/07 (Dz. U. Nr 105, poz. 880).
42. Ustawa z dnia 25 października 1991 r. o zmianie ustawy o powszechnym obowiązku obrony Polskiej Rzeczypospolitej Ludowej oraz niektórych innych ustaw (Dz. U. z 1991 r. Nr 113, poz. 491).
43. Ustawa z dnia 9 lipca 2003 r. o Wojskowych Służbach Informacyjnych (Dz. U. z 2003 r. Nr 139, poz. 1326).
44. Zarządzenie Nr 21/MON Ministra Obrony Narodowej z dnia 30 lipca 2004 r. w sprawie nadania statutu Wojskowym Służbom Informacyjnym (Dz. Urz. MON z 2004 r. Nr 9, poz. 98).
45. Ustawa z dnia 22 stycznia 1999 r. o ochronie informacji niejawnych (Dz. U. z 1999 r. Nr 11, poz. 95).
46. Ustawa z dnia 9 czerwca 2006 r. Przepisy wprowadzające ustawę o Służbie Kontrwywiadu Wojskowego oraz Służbie Wywiadu Wojskowego (Dz. U. Nr 104, poz. 711).
47. Ustawa z dnia 9 czerwca 2006 r. o Służbie Kontrwywiadu Wojskowego oraz Służbie Wywiadu Wojskowego (Dz. U. Nr 104, poz. 709 z późn. zm.).
48. Zarządzenie Ministra Obrony Narodowej z dnia 28 maja 2008 r. w sprawie nadania statutu Służbie Wywiadu Wojskowego (M.P. z 2008 r. Nr 44, poz. 385).
49. Zarządzenie Ministra Obrony Narodowej z dnia 20 października 2006 r. w sprawie nadania statutu Służbie Kontrwywiadu Wojskowego (M.P. Nr 75 poz. 756).
50. Zarządzenie Ministra Obrony Narodowej z dnia 13 czerwca 2018 r. zmieniające zarządzenie w sprawie nadania statutu Służbie Wywiadu Wojskowego (M.P. poz. 694).
51. Ustawa z dnia 9 czerwca 2006 r. o służbie funkcjonariuszy Służby Kontrwywiadu Wojskowego oraz Służby Wywiadu Wojskowego (Dz. U. Nr 104, poz. 710).
52. Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 28 września 2017 r. w sprawie ogłoszenia jednolitego tekstu ustawy o Służbie Kontrwywiadu Wojskowego oraz Służbie Wywiadu Wojskowego (Dz. U. z 2017 r. poz. 1978).
53. Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 20 marca 2019 r. w sprawie ogłoszenia jednolitego tekstu ustawy o Służbie Kontrwywiadu Wojskowego oraz Służbie Wywiadu Wojskowego (Dz. U. z 2019 r. poz. 687).
54. Ustawa z dnia 22 listopada 2018 r. o zmianie ustawy – Prawo oświatowe, ustawy o systemie oświaty oraz niektórych innych ustaw (Dz. U. z 2018 r. poz. 2245).

Biographical note

Marian Kopczewski – Professor at the Military University of Land Forces in Wrocław – Faculty of Security Studies, where he lectures, popularising modern teaching techniques and leads the process of awarding of degrees in the field of security, emergency management and MA seminars. In the study he focuses on the analysis and evaluation of the possibilities of using information systems in management and teaching, as well as in national and internal security

systems, including European and Euro-Atlantic political and military integration processes. He is an author and co-author of over 600 various domestic and foreign publications, including several monographic publications on national security. He manages scientific and research works of national and international range, as part of this study he has promoted 7 PhDs and is a supervisor of a few. He is a member of Polskie Towarzystwo Nauk o Bezpieczeństwie (Polish Society of Security Sciences) and Polskie Towarzystwo Nauk o Obronności (Polish Society of Defence Sciences).

Zbigniew Ciekanski – Dr. hab. Eng., professor at the Pope John Paul II State School of Higher Education in Białą Podlaska, and at such universities as the University of Warsaw, the State Higher School of Technology and Economics in Jarosław, the Cardinal Stefan Wyszyński University. His scientific interests focus on issues related to human resources management, crisis management, as well as security in the broadest sense. He is the author of several dozen books and more than two hundred domestic and international studies on the subjects as mentioned above.

Anna Piotrowska – M.A., a graduate of the National Defense University and the Warsaw School of Social and Economic Sciences. She is currently in her second year of doctoral studies at the War Studies University at the Faculty of National Security. She is a specialist Italian translator. Her interests include the internal security of the state and she is an author/co-author of several publications in this field.

Podstawy prawne funkcjonowania służb specjalnych w Polsce

STRESZCZENIE

W artykule przedstawiono najważniejsze akty prawne regulujące działania służb specjalnych w Polsce w latach 1990-2018.

W ramach transformacji ustrojowej zgodnie z ustawą z 6.04.1990 r. powstał Urząd Ochrony Państwa, który zastąpił dotychczasowy wywiad i kontrwywiad cywilny. W 2002 r. UOP uległ likwidacji, a w jego miejsce ustawą z dnia 24.05.2002 r. powołano Agencję Wywiadu oraz Agencję Bezpieczeństwa Wewnętrznego. AW została utworzona w celu ochrony bezpieczeństwa zewnętrznego państwa, natomiast ABW w celu ochrony bezpieczeństwa wewnętrznego państwa i jego porządku konstytucyjnego. Wymieniona ustawa dokonała podziału zadań między tymi służbami. Pomimo tego, iż jednym z zadań ABW było zapobieganie i wykrywanie przestępstw korupcji funkcjonariuszy publicznych, ustawą z dnia 9.06.2006 r. powołano Centralne Biuro Antykorupcyjne, nadając mu status służby specjalnej, chociaż CBA wykonuje zadania typowo policyjne. Natomiast ustawa z dnia 9.06.2006 r. o Służbie Kontrwywiadu Wojskowego i Służbie Wywiadu Wojskowego stanowiła podstawę prawną do działania obu Służb w miejsce zlikwidowanych Wojskowych Służb Informacyjnych.

W artykule skupiono się na służbach obecnie funkcjonujących. Poddano analizie przepisy prawne, na podstawie których funkcjonują. Są to przede wszystkim ustawy kompetencyjne, do których wprowadzono szereg zmian. Wynikały one m.in. z wdrażania dyrektyw i rozporządzeń instytucji europejskich, orzeczeń Trybunału Konstytucyjnego, wprowadzenia nowych ustaw, dotyczących np. powstania Służby Ochrony Państwa czy zmiany uprawnień Straży Marszałkowskiej. Zwrócono uwagę na liczne zarządzenia zmieniające statuty, szczególnie ABW, a tym samym reorganizujące strukturę urzędów.

SŁOWA KLUCZOWE służby specjalne, bezpieczeństwo, demokracja, ustawodawstwo

How to cite this paper

Kopczewski M, Ciekanski Z, Piotrowska A. *Legal basis for the functioning of special services in Poland*. Scientific Journal of the Military University of Land Forces. 2020;52;2(196):292-307.

DOI: <http://dx.doi.org/10.5604/01.3001.0014.2534>



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