The System of State Supervision Over Private Security Activities in Poland

Piotr Bogdalski
ORCID: 0000-0002-5320-2808
Police Academy in Szczytno, Poland

Waldemar Jarczewski
ORCID: 0000-0001-8899-2806
Adam Mickiewicz University in Poznań, Poland

Abstract. The subject of this study is the private security sector in Poland, while the purpose of the considerations carried out in it is the presentation and evaluation of the state system of supervision over this sector. Among the basic methods that were used to achieve the stated goal were theoretical methods, among which dogmatic-legal analysis, critical analysis of the literature and document analysis. In the introductory part of the article, the general characteristics of private security activities are presented, and the essence of state supervision of these activities is defined and the need for it is justified. In turn, its main part is devoted to considerations of the organisation of state supervision of the security business in Poland. In this regard, the supervisory bodies, their subject and object jurisdiction, as well as the means of control and supervision available to these bodies are presented. A summary of the findings conducted in the article is included in the final conclusions. According to them, the supervision in question has been properly placed in the subjective structure of the security system of the Polish state, while the state supervisory bodies have been equipped with means of control and supervision that are appropriate for the implementation of the tasks set for them.

DOI: 10.5604/01.3001.0054.4560
http://dx.doi.org/10.5604/01.3001.0054.4560

Keywords: private security, protection of persons and property, state supervision of private security, internal security

Introduction

The subject of this study is the private security sector in Poland, while the purpose of the considerations carried out in it is the presentation and evaluation of the state system of supervision over this sector. Implementation of such an objective requires an initial presentation of the general characteristics of private security activities and a definition of the essence of state supervision of these activities and the need for it. The findings in the above regard will be the basis for fundamental inquiries that will focus on the organisation of state supervision of security activities in Poland. In this regard, the supervisory authorities, their subject matter and personal jurisdiction, as well as the means of control and supervision available to these authorities will be presented. The assumed end result of the considerations carried out will be a critical assessment of the systemic solutions adopted by the Polish legislator. The primary methods that were used to achieve the stated objective include theoretical methods, among which it is appropriate to mention dogmatic-legal analysis, critical analysis of the literature and document analysis.
Introductory remarks

A preliminary point that should be noted is the relation between the issue of private security of persons and property and the security of Poland. In this regard, it will be sufficient to refer to the systematics adopted in the White Book on National Security of the Republic of Poland. According to it, within the framework of the integrated system of state security, there should be two constitutional areas, which are defined as external and internal security, and four basic areas — defence (military security), protection (non-military security), social security and economic security. At the same time, within the various areas of state security, sectors were separated, which, in principle, refer to the structure of public administration departments adopted in Poland.1

With the above systematization in mind, it should be stated that the protection of persons and property belongs to the area of internal security of the Polish state and the protective domain contained therein, and — assigned to this domain — the internal affairs sector.2 At the same time, it should be noted that these are only internal affairs in the field of security and public order protection.3 For the purposes of further consideration, it can be assumed that the concept of ‘public security’ means a factual state in which the state provides its chosen goods, in particular, human life and health and property, with effective protection against violations (legally protected goods).4 According to this definition, the state, through legal acts, creates a catalogue of socially relevant goods and organizes a system for their protection. In turn, the designation of the term ‘public order’ can be considered ‘the totality of unwritten rules of individual behaviour in public places, the observance of which is, according to prevailing views, a necessary prerequisite for the orderly coexistence of citizens.5 In both legal and jurisprudential language, the two terms mentioned are often juxtaposed as a single phrase (security and public order).

As Andrew Urbanek rightly notes, the state, in order to protect its vital interests, including security and public order, should ‘establish an internally coordinated security system, set up and maintain in readiness for operation the security management

---

structures and all executive systems capable of taking specific actions under conditions of external and internal threats. In this regard, it is worth noting that the state, striving to achieve the desired level of security and public order, creates structures with high efficiency of operation. Due to the special nature of threats that occur in the above area, the state entrusts the task of neutralizing them to hierarchically subordinate, uniformed and armed services. These services are organized using the principle of centralization and hierarchical subordination, which allows decisions to be made and implemented quickly. In turn, their militarization, which manifests itself in armaments, uniforms and a particular type of discipline, affects the uniformity, professionalism and effectiveness. In addition, the provision of weapons accentuates the power to repel the most dangerous attacks on legally protected property. This is especially true for those acts of lawlessness in which the violator uses weapons or other equally dangerous objects.

As Jolanta Jablonska-Bonca points out, even in the 20th century, according to the traditional concept of internal state sovereignty, the legitimate use of force in internal relations was considered an exclusive prerogative of the state. It was not until the end of the so-called ‘Cold War’ period that this concept was modified, and the result was the limited authorization of non-state actors to use firearms and means of direct coercion. This type of deviation from the performance of tasks by public administration entities that operate in forms of public law is referred to in the relevant literature as the privatization of state tasks. In the case of security, as Wawrzyniec Serafin rightly points out, such privatization should take into account the following principle: the greater the degree of danger, the smaller the permissible scope of privatization. According to him, the demarcation line that the state should not cross in such a situation is to act against specific internal and external threats to state security. This applies in particular to the fight against organized crime, terrorist attacks or military actions taken outside the national territory. On the other hand, activities of a permanent nature that are performed within the state may be privatized. For example, this may apply to the protection of critical infrastructure, the security of major events or — discussed in this paper — the protection of persons and property.

---

7 The threats are in particular dealt with by: the Police, the Internal Security Agency, the Prison Service, the Border Guard, the State Protection Service, the Customs and Fiscal Service, the Central Anti-Corruption Bureau, the Marshal Guard, the Military Counterintelligence Service, the Military Police, the Road Transport Inspection, the State Hunting Guard, the State Fishing Guard, the Forest Guard or the Park Guard.
8 P. Bogdalski, Bezpieczeństwo kadrowe Policji…, p. 46.
General characteristics of the private security sector in Poland

It can be considered that the first legal act through which the Polish state laid the foundations of the system of private protection of persons and property was the act of February 18, 1938 on enterprises requiring special trust.\textsuperscript{12} It is worth noting that this act was only repealed by article 53 of the Act of December 23, 1988 on Business Activity.\textsuperscript{13} In the post-World War II period, given the political foundations of the Polish state at the time, a viable private security sector for people and property was not possible. The totalitarian state that was the People’s Republic of Poland at the time was characterized by the pursuit of economic centrism and the preservation of a monopoly on the possession and use of weapons.\textsuperscript{14} In contrast, the beginning of the rapid development of the private security sector dates to the late 1980s and is associated with the issuance, mentioned above, of the act on business activity\textsuperscript{15}. Unfortunately, the initial period of private security of persons and property, including state supervision of it, was marked by numerous irregularities. Their analysis was the subject of a post-control statement, which the Supreme Chamber of Control submitted to the Prime Minister in March 1997. Within the framework of the statement, the inspectors requested that urgent measures be taken to organize the legal status of entities operating in the field of security services for persons and property, as well as to adapt solutions in this area to the requirements of the rule of law, so that the interests of the state and citizens are effectively protected.\textsuperscript{16}

The results of the Chamber’s control, which formed the basis of the aforementioned statement, had a significant impact on the enactment of the current act on the security of people and property in August 1997.\textsuperscript{17} This act strictly defines the area of competence related to the protection of public security and order that the

\textsuperscript{12} Dz. U. No. 12, item 79 as amended. In implementation of the delegation contained in this act, the Minister of the Interior issued a decree dated July 30, 1938. (Dz. U. No. 57, item 450).

\textsuperscript{13} Dz. U. No. 41, item 324 as amended.


\textsuperscript{15} The act introduced the general principle that undertaking and carrying out business activities is free and permitted to everyone on an equal footing, subject to the conditions prescribed by act (Article 1 of the act). At the same time, in the case of personal and property security services, the act restricted economic freedom by stipulating that a license must first be obtained in order to undertake business activities involving them [Article 11(10) of the act].


\textsuperscript{17} Consolidated text: Dz. U. 2021, item 1995 as amended; hereafter: act on security of people and property.
state assigned to private entities for the protection of persons and property. These entities may undertake activities specified by law to provide security of life, health and personal integrity of protected persons (protection of persons), and activities that prevent crimes and minor offences against protected property, prevent damage resulting from these events, and prevent unauthorized persons from entering the protected area (protection of premises). For this purpose, qualified physical security personnel are authorized to use and employ means of direct coercion and firearms. At the same time, the aforementioned protection refers only to combating direct physical threats from a human being. Examples of these include terrorist attacks, kidnappings, robberies, thefts, employee misappropriations, burglaries, vandalism, sabotage and diversion, or unauthorized entry into a protected area. Thus, the subject matter jurisdiction of private security entities is only a small slice of the threats that are assigned to the security and public order sector in the state security system.

Entities that operate under and within the scope of the provisions of the Polish act on the security of people and property form a rather diverse group. First of all, they include entrepreneurs who have been granted a concession by the Minister of Internal Affairs to conduct business activities in the provision of personal and property protection services. These include large commercial companies registered in the National Court Register, which employ up to several thousand people, as well as civil partnerships or self-employed individuals operating on the basis of an entry in the Central Registration and Information on Business. In Poland in 2019, the licensed business activity of protection of persons and property was provided by 5727 entrepreneurs.

---

18 In the doctrine of administrative law, private entities for the protection of persons and property are also referred to as private police. According to Janina Czapska, the term ‘allows to raise the status of the private sector relative to the public sector. This emphasizes the formal element — anyone who is not state-owned — rather than the material element, i.e., achieving the desired goal’ (J. Czapska, Bezpieczeństwo obywateli. Studium z zakresu polityki prawa, Kraków: Polpress, 2004, p. 159). Compare also: S. Pieprzny, Podmioty prywatne w ochronie bezpieczeństwa i porządku publicznego, [in:] Między tradycją a przyszłością w nauce prawa administracyjnego, Księga jubileuszowa dedykowana Profesorowi Janowi Bociowi, Supernat J. (Ed.), Wrocław: Uniwersytet Wrocławski, 2009, p. 557.

19 Article 2(1)(20) of the Act of May 24, 2013 on the means of direct coercion and firearms (consolidated text: Dz. U. 2023, item 202 as amended).

20 As Petar Jovanovic points out, from the point of view of the source of hazards that destructively affect the protected assets, one can distinguish between natural hazards and man-made hazards). Natural threats are related to the action of natural forces of various backgrounds, while man-made threats are related to human activity. Among man-made threats, physical (direct) and cyber (indirect) threats can be distinguished. Physical threats materialize in the form of direct, physical human interference with protected property (e.g., burglary, beating), while cyber threats involve indirectly affecting the control systems of protected property to disrupt its functioning (e.g., via radio waves or computer networks) [P. Jovanovic, Modelling of Relationship Between Natural and Man-made Hazards, [in:] Natural and Man-Made Hazards, El-Sabh M.I., Murty T.S. (Eds), Springer Science & Business Media, 2012, pp. 9–17]; Compare also: Executive Order 13010: Critical Infrastructure Protection, United States. Office of the Federal Register. Presidential Executive Orders, https://www.hsld.org/?view&did=1613, [accessed: 09/08/2023].

In addition, security activities can also be carried out by internal security services. These services are defined by the legislator as armed and uniformed teams of employees that have been set apart in the organizational structures of businesses or other organizational units. As a rule, these units may create such organizational cells for their own protection and with the approval of the locally competent Regional Police Commander. As of 2022, 201 internal security services remained under the supervision of the Police.

A separate conceptual category is specialized armed security forces. The status of such force may be held by both internal security services and licensed entrepreneurs for the protection of persons and property, provided that they obtain a weapons permit. Such a permit (gun certificate) authorizes an employer to possess weapons and make them available to employees who have a certificate of a person permitted to possess weapons. As of 2022, the status of a specialized armed security force was held by 612 licensed personal and property protection entrepreneurs and 201 internal security services in Poland. It is worth noting at this point that the above data does not take into account civilian guard divisions, which are created as internal security services operating on the territories of organizational units subservient, subordinate to or supervised by the Minister of Defence. The competence to create and supervise the activities of such branches was statutorily delegated to the Minister of Defence.

22 The procedure for the establishment, organization and supervision of the activities of internal security services that operate on the territories of organizational units subservient to, subordinate to or supervised by the Minister of Defence (civil guard divisions) is regulated separately.

23 In accordance with Article 29(1)(1 and 2) of the Act of May 21, 1999 on arms and ammunition (consolidated text: Dz. U. 2020, item 955), such a permit is issued to entrepreneurs and organizational units that have established internal security services, if weapons are necessary for them to perform tasks under the security plan, and to entrepreneurs who have obtained licenses to conduct business activities in the field of security services for persons and property, if weapons are necessary for them in the scope and forms specified in the license.

24 Facility weapons are issued to employees in connection with their performance of security tasks within the employer’s supervised facilities or areas, or for the performance of security tasks outside these facilities and areas (e.g., convoy tasks).


26 According to data presented by J. Gabriel, in 2014 there were 77 such units, with a total of 3,466 posts (J. Gabriel, Co dalej z ochroną jednostek wojskowych?, ‘Studia Bezpieczeństwa Narodowego’, 2016, No. 1, p. 312). On the other hand, in 2016, military complexes were protected by 65 civilian guard units, and the number of their personnel was 3047 [Najwyższa Izba Kontroli, Delegatura w Katowicach, Wystąpienie pokontrolne dotyczące kontroli P/16/066 — Gospodarowanie mieniem w jednostkach wojskowych o niskim kompleksowskim rozwinięciu, sygn. LKA.410.016.04.2016, pp. 24–5, https://www.google.com/search?q=kontrola+nik+owc&oq=kontrola+nik+owc&aqs=chrome..69i57j33i160l4.4869j0j7&sourceid=chrome&ie=UTF-8, [accessed: 09/08/2023].

27 Cf. Article 7(5), Article 10(3), Article 14, Article 43a of the Act on security of people and property.
The essence of state supervision over private security sector’s activities

From a normative point of view, the privatization of state tasks involves the statutory transfer of their performance to non-state (private) entities. In such a situation, the state determines what state tasks, to what extent, under what conditions, by whom, in what forms and by what means can be performed. Jolanta Jabłonska-Bonca aptly points out that the privatization of certain state tasks does not relieve the state of responsibility for how these tasks are performed by private entities. In fact, it should be remembered that the objectives of the tasks remain unchanged, only their implementation is carried out through entities other than the state. Consequently, any state that privatizes tasks that belong to it must also create a system of effective supervision of their performance. The purpose of such a system should be to safeguard the proper performance of the privatized tasks, and to ensure that the manner in which they are carried out does not go beyond the legally defined scope of privatization. This is particularly important in the case of privatization of state internal security tasks, as Polish Ombudsman Adam Bodnar aptly pointed out. According to him, ‘one of the basic tasks of the state is to act as an entity that provides citizens with their security and to protect their property, the transfer of these tasks to private entities is a significant challenge for the state, as it must create the conditions for such tasks to be carried out as if they were carried out by the state. Hence, the rigours of engaging in this type of activity should be clearly and precisely defined, and should lead us to believe that by doing so, our sense of security will not suffer.’ The Ombudsman stresses that security activities, performed as part of the licensed activity of protection of persons and property, can lead to interference with human dignity, life, personal inviolability or freedom, which are values under the direct custody of the Polish Constitution. Consequently, this activity requires special state supervision. Its actual absence or ineffectiveness ‘may lead to irregularities in the implementation of one of the basic tasks of the state, which is to provide security to citizens and protect their property’.

---

28 J. Jabłońska-Bonca, Prywatna ochrona..., p. 114.
31 Ibid., p. 3.
It should be emphasized that the lack of proper supervision of the private security sector can cause negative consequences not only in the constitutionally protected interests of citizens, but also in the interests of the state as an organization. According to Pawel Soloch, ‘reducing expenditures on the police and transferring their tasks to private entities, in the absence of effective supervision, can, in an extreme scenario, threaten state sovereignty. This could occur in the event of an external (non-Polish) company taking over a significant part of the police services market(-)’. Unfortunately, the author did not make any further detailed considerations that would address the above thread. Of course, given the freedom of establishment and freedom to provide services that apply in the economic space of the European Union, it is not possible to limit the private security services sector exclusively to Polish companies. However, regardless of whether a private security company is classified as ‘external (non-Polish)’ or ‘Polish,’ it cannot be ruled out that foreign intelligence services may attempt to use its activities for their own purposes (e.g., espionage, sabotage, diversion). It should be borne in mind that private security companies ensure the implementation of the statutory mandatory protection of areas, facilities and equipment that have been classified by the Polish state as important to its security. Shielding against this kind of deliberate use of the private security sector should be provided, within the framework of its general counterintelligence competence, by the Internal Security Agency and the Military Counterintelligence Service. Due to the classified nature of the measures taken in this regard, this issue cannot be evaluated in this paper. However, even leaving aside the aspect of the deliberate use of private security companies by foreign special services, it should be remembered that the mere defective performance of security duties in the case of property that is subject to statutory mandatory protection can lead to the violation of important state interests, such as defence, public security or its economic interests. Properly functioning supervision on the private security sector is a mechanism that, from the point of view of the state security system, should counter such threats.

In the doctrine of Polish administrative law, the concept of supervision is used in particular to define the specialized, police powers of public administration bodies,
which derive from substantive law. Supervision understood in this way is exemplified, as Marek Szewczyk points out, in the creation of legal relations that the public administration establishes with non-administrative entities, in order to neutralize threats to the normal course of collective life, prevent the occurrence of such threats and remove the consequences of their occurrence. At the same time, the rationale for the supervision understood in this way is that the legislator has established the protection of selected assets, empowering the administration to guard their inviolability and use the means necessary to ward off the dangers threatening them.

Thus, it can be assumed that the state’s ongoing supervision of the private security industry serves to ensure the lawful operation of private security entities for the protection of persons and property. Its essence is the ability of state supervisory authorities to unilaterally and sovereignly influence the operation of private security entities, if a prior control of their operation revealed deviations from the standards established by the state for the conduct of security activities. The exercise of such supervision is consequently intended to remove the resulting threats to human life, health and property, as well as threats to property that has been recognized by the state as important to its interests and subject to statutory mandatory protection.

**Supervisory authorities and their jurisdiction**

The authority to supervise the private security industry in Poland has been entrusted primarily to the minister responsible for internal affairs as the licensing authority. The minister supervises the business activities carried out by entrepreneurs in the field of security services for persons and property, which are provided by them on the basis of a license granted by the minister. The area of this supervision is covered by the compliance of the performed activities with the granted license; compliance with the conditions for the performance of business activities; the creation of a threat to defense, state security or public order and the protection of the safety or personal property of people.

---

41 The literature distinguishes two types of state rationing supervision. The first is called preventive supervision and covers states of facts or preparatory activities before an entity is allowed to engage in business activities. The other type of supervision is carried out by the state with respect to entrepreneurs who are already engaged in business activities (A. Chełmoński, *Nadzór policyjny i reglamentacyjny w administracyjnym prawie gospodarczym*, [in:] *Administracyjne prawo gospodarcze*, Borkowski A., Chełmoński A., Guziński M., Kiczka K., Kieres L., Kocowski T., Szydło M., Wrocław: Kolonia Limited, 2009, p. 516). The latter type of surveillance, also referred to as current surveillance, is discussed in this paper.
42 The subject scope of supervision by the licensing authority is established in Article 23c(1) of the Act on the security of people and property. This provision should be considered *lex specialis* to Article 40(1) of the Act of March 6, 2018, *Entrepreneurs’ Act* (consolidated version: Dz. U. 2023, item 221 as amended; hereafter: *Entrepreneurs’ Act*). Despite the aforementioned correlation, the content of the two provisions is essentially the same.
Another supervisory authority discussed here is the Commander in Chief of the Police. Regardless of ministerial oversight, he/she exercises — with some exceptions — additional supervision over licensed security contractors who have the status of specialized armed security units. On the other hand, when it comes to specialized armed security units, which function as internal security services, the Commander in Chief of the Police is the only state authority designated to exercise statutory, specialized supervision over their activities. It should be borne in mind, as has already been mentioned, that these services are established with the approval of the competent regional police commander as organizational units of the entities they are intended to protect. They are not engaged in the business of providing security services for persons and property, but only meet the protection needs of the entity that has set them apart in its organizational structure (an armed and uniformed team of employees). Thus, their security activities do not require a license, and the minister in charge of internal affairs cannot exercise specialized supervision over them as a licensing authority.

The scope of supervision of the Commander in Chief of the Police over specialized armed security forces covers the principles and methods of carrying out tasks of protection of persons and property (including organization and principles of operation, armament, equipment, cooperation with other forces and services, compliance of current states of protection of secured entities with their protection plans); the methods of use of means of direct coercion or firearms by employees of the said units and their possession of qualifications required by law.

Two notable exceptions have been made to the principle of the Commander in Chief of the Police’s supervision of specialized armed security forces. Due to the specific nature of the subject of their protection, the supervisory authorities are also the Commander in Chief of the Border Guard and the Minister of Defence.

To the first of these authorities, the act on the security of people and property has entrusted the supervision of specialized armed security formations with regard to their performance of tasks related to security checks carried out at airports. The subject scope of this supervision is the same as that of the Commander in Chief of the Police. At this point, it should be noted that the President of the Civil Aviation Authority also has supervisory powers in this regard. From the point of view of the Aviation Law of July 3, 2002\(^{43}\), he/she is the central government administration body responsible for civil aviation matters. Their jurisdiction includes, in particular, supervision in the field of civil aviation over the activities of airport security services.\(^{44}\) The Border Guard, on the other hand, is seen under the Aviation Law as an entity that, on behalf of the President of the said authority, supervises the proper conduct of security checks.\(^{45}\) According to the provisions of this law, tasks related to security checks in civil aviation are carried out under the supervision of the President of the Authority, who cooperates in this regard with the Border Guard.\(^{46}\) At the same time,

\(^{43}\) Consolidated version: Dz. U. 2022, item 1235 as amended).

\(^{44}\) Article 21(2)(3, 22, 23) of the Aviation Law.

\(^{45}\) Lukasz Szymankiewicz even claims that the Border Guard performs the said supervision ‘on behalf of the President of the Civil Aviation Authority’ (Ł. Szymankiewicz, Polski system ochrony lotnictwa cywilnego przed aktem bezprawnej ingerencji, ‘Res Politicae’, 2018, No. 10, pp. 71, 78).

\(^{46}\) Article 186b(2) of the Aviation Law.
the Aviation Law and the regulations issued on its basis determine what, within the framework of the aforementioned cooperation, is the scope and manner of supervision conducted by the Border Guard.47

In general terms, it should be said that the Border Guard can conduct control activities against specialized armed security forces under two legal regimes. Most importantly, from the point of view of the act on the security of people and property, the Commander in Chief of the Border Guard is an independent supervisory authority that is entitled to conduct incidental controls of the said forces (both planned and ad hoc), which may be either comprehensive or issue-based. In addition, according to the Aviation Law, the Border Guard is a kind of control tool that is used by the President of the Civil Aviation Authority as part of their supervision. In this case, the supervision is of a permanent nature, and its main purpose is to respond immediately to irregularities found.48

On the other hand, the Minister of Defense supervises the activities of specialized armed security forces, which carry out tasks in the field of protection of areas, facilities and equipment belonging to organizational units subordinated to them, subservient or supervised by them. This supervision is exercised through the Commander in Chief of the Military Police, and its scope of subject matter is the same as that of the Commanders in Chief of the Police and the Border Guard. Similarly, as in the previously described cases, civil guard divisions, which are internal security services, are, with respect to security activities, supervised solely by the Minister of Defense. However, if the aforementioned activities are carried out on the basis of civil law contracts with licensed personal and property security entrepreneurs, the supervision of the Minister of Defense is exercised in parallel with that of the licensing authority.

**Measures of control**

Another point that should be mentioned are the control and supervision measures belonging to the authorities indicated above. We can generalize that control is a process that involves the determining of the existing state relating to the

---

47 Cf: Article 186b(3, 9, 9a) of the Aviation Law and sections 79–83 (Rozdział 21. Współdzia-

lanie Prezesa Urzędu ze Strażą Graniczną w sprawie nadzoru nad kontrolą bezpieczeństwa wykonywaną przez zarządzających lotniskami) Krajowego Programu Ochrony Lotnictwa Cywilnego [załącznik do rozporządzenia Ministra Infrastruktury z dnia 2 grudnia 2020 r. w sprawie Krajowego Programu Ochrony Lotnictwa Cywilnego (Dz. U. 2021, item 17 as amended)].

48 The Border Guard, in terms of cooperation with the President of the Civil Aviation Authority in the exercise of supervision, is authorized, among other things, to immediately respond to violations of civil aviation security regulations by employees of the airport security service, and to immediately direct requests to the airport manager to remove identified serious deficiencies. Control activities in the above area are carried out by Border Guard officers in the form of patrol and stationary (carrying out surveillance at security checkpoints, at a distance that allows a reaction to be taken in case of irregularities) and CCTV surveillance system and other systems available at the airport recording the course of security control (observing and analyzing the recording of the recorded image in the on-line and off-line system, in order to take a reaction in case of irregularities). Cf: Article 186b(3) of Aviation Law and Article 79(1) of the National Civil Aviation Security Program.
activities of the controlled entity and its comparison with the expected (required) state. In the event of a discrepancy between these states, the goal of the control process is to determine the extent of the discrepancy and the reasons for it.49 At the same time, the title of control measures should be attributed to legal instruments, the use of which makes it possible to obtain information on the activities of the controlled entity.50

From the point of view of state supervision of the activities of the private security sector, control does not occur as a process in its own right, but is a stage in the supervision process. In this regard, its findings provide a basis for the possible application of supervisory measures. Through these measures, the supervisory authorities can have a binding effect on the activities of supervised entities. The essence of supervision, as Jan Zimmermann rightly points out, is the reaction of the supervisory authority to deviations of the actual behaviour of the supervised entity from the expected pattern of behaviours (the chosen criterion for supervision). At the same time, the reaction of the supervisory authority consists in the application of supervisory measures, which come down to the possibility of a sovereign and unilateral influence on the activities of the supervised entity.51

Supervisory authorities may use a catalogue of many control measures in the course of control activities. At the same time, the basic influence on their selection should be the economics of control activities. In this regard, it should be noted that from the point of view of the scope of control activities, comprehensive and issue-based control can be distinguished. The former covers the entire activity of the controlled entity, while the latter covers only a selected area of its activity.52 In accordance with the provisions of the Entrepreneurs’ Act, the control of business activities should be planned and carried out after an analysis of the likelihood of violation of the law in the course of its performance. Such analysis should include the identification of subject and object areas where the risk of violation is greatest. At the same time, the control activities themselves should be carried out in an efficient manner and as undisturbed as possible in the functioning of the entrepreneur.53

Given the above, it should be assumed that the basic form of control of security activities should be issue-based controls of a planned nature, which involve only as many security measures and to such an extent as is necessary to determine the actual behavior of the controlled entity, in the examined area of its activities. On the other hand, the exception to this rule should be ad hoc controls, which are interventionist in nature and arise from the need to investigate emergencies.

51 Cf. J. Zimmermann, Prawo administracyjne..., p. 216.
53 Cf. Article 47(1) and Article 52 of the Entrepreneurs’ Act.
The primary means of control that can be exercised by the licensing authority include the right to freely enter the area where the licensed business activity is carried out. This applies to real estates, facilities, premises or parts of the listed sites, including those where security activities are carried out. In the case of control of sites of security activities, the controllers also have the right to ID security personnel in order to determine or confirm their identity. Entry is possible on the days and during the hours when this activity is or should be carried out. The measure allows control authorities to collect primary data based on observations. Similar in nature is the authorization for controllers to use unmanned aircrafts. However, in this case, the aerial drone operator conducts surveillance from outside the controlled area.

In establishing the state of affairs, which relates to the controlled area of the licensee's operations, data obtained from explanations and tangible data carriers are as important as observation data. In this regard, the licensing authority may demand from the controlled entity oral or written explanations and presentation of documents or other information carriers, as well as access to data and items relevant to the subject of the inspection. This includes, in particular, documentation on security personnel; related to the organization and performance of security services; and related to the conclusion and performance of contracts for the provision of security services. Regardless of the above, the licensing authority may request the courts, the prosecutor's office, the Police, the Border Guard, and public administration bodies to provide information, materials, and data that could be relevant to the ongoing control proceedings. At the same time, the purpose of such proceedings must be to determine whether the controlled security activity grossly violates the conditions for carrying out the licensed business activity, or whether it poses a threat to the defense and security of the state or the security of citizens.

The control measures indicated so far can be used for both planned and ad hoc inspections. It is worth noting that in the catalogue of measures belonging to the licensing authority there is also a measure whose purpose is exclusively ad hoc control. According to it, if the licensing authority obtains information about possible irregularities in the performance of the licensed activity, it may — in order

54 Article 23c(2)(1) of the Act on the security of people and property.
55 Article 23c(2)(3) of the Act on the security of people and property.
56 Article 49(3a) of the Entrepreneurs' Act.
57 It should be noted that the current regulation of the use of unmanned aerial vehicles for business control raises significant concerns. The Entrepreneurs' Act stipulates that control activities carried out with the use of unmanned aerial vehicles may be carried out without the presentation of an official ID card by the employees of the control authority and without the obligation to inform the entrepreneur or the person against whom the control activities have been undertaken about their rights and obligations during the control. As Anna Holda-Wydrzyńska rightly observes, such a solution is a deviation from the principle of legitimizing and informing the entrepreneur of his rights and obligations during the control (A. Hołda-Wydrzyńska, Żasady kontroli działalności gospodarczej w świetle nowego Prawa przedsiębiorców, [in:] Verus amicus rara avis est: studia poświęcone pamięci Wojciecha Organiścaka, Lityński A., Matan A., Mikołajczyk M., Nawrot D., Nancka G. (Eds), Katowice: Wydawnictwo UŚ, 2020, p. 277).
58 Article 23c(2)(2) of the Act on the security of people and property.
59 Article 24a of the Act on the security of people and property.
to verify it — summon the entrepreneur to provide written explanations and documents in their possession.\(^{60}\) The purpose of this measure is to determine whether the entrepreneur meets the conditions for carrying out licensed business activities.

The licensing authority may carry out control activities using the above measures either on its own — employees of the Department of Permits and Concessions of the Ministry of Internal Affairs and Administration then act on behalf of the licensing authority — or through entities authorized by it.\(^{61}\) Above all, the minister in charge of internal affairs may authorize the Commander in Chief of the Police to control licensed business activities that are conducted in the provision of security services for persons and property. At the same time, the Commander in Chief may entrust the regional police commanders to carry out controls ordered by the minister. In addition, if the licensed security business activity consists in airport security screening, the licensing authority may authorize the Commander in Chief of the Border Guard to control the correctness of its conduct. In such a case, the Commander in Chief may entrust the Border Guard division commanders with conducting the control. Notwithstanding the above, the licensing authority may appoint an inter-institutional team to conduct the control. It may include representatives of the minister responsible for internal affairs, the Minister of National Defence, the Commander in Chief of the Police, the Commander in Chief of the Border Guard or the President of the Civil Aviation Authority. Creation of this type of team will be particularly appropriate in the case of a control of a comprehensive nature, when the entrepreneur in question carries out licensed security activities in areas relevant to more than one of the above-mentioned institutions.

In addition to the licensing authority, statutory supervision in the case of specialized armed security forces is exercised, as already mentioned, by the Commander in Chief of the Police, the Commander in Chief of the Border Guard and the Minister of National Defense (through the Commander in Chief of the Military Police). As part of their control activities, the aforementioned supervisory authorities have the right to enter the premises of an entrepreneur engaged in the activity of protection of persons and property, on such days and hours when the said activity is carried out or should be carried out.\(^{62}\) This also applies to areas, facilities and other places where security is carried out. However, in the case of protected places, access is also allowed outside the hours during which security activities are carried out.\(^{63}\) In addition, if the controlled specialized armed security force has been established by an entrepreneur who conducts activities, the supervisory authorities in question — like the licensing authority — have the right to conduct control activities using unmanned aerial vehicles.

\(^{60}\) Article 24b of the Act on the security of people and property.

\(^{61}\) Cf: Article 23, 23a and 23b of the Act on the security of people and property.

\(^{62}\) Article 43(2)(3 and 4) and Article 43a(9)(1 and 2) of the Act on the security of people and property.

\(^{63}\) Article 43a(9)(6) of the Act on the security of people and property; section 10(3) of the regulation of the Minister of Interior of April 27, 2012 on the detailed rules for issuing authorizations for control and the procedure for carrying out the activities of the Commander in Chief of the Police’s supervision over the activities of specialized armed protection units (Dz. U. 2012, item. 557; hereinafter: the regulation of the Ministry of Interior on the supervision of the National Police Headquarters over specialized armed security forces).
Another control measure that can be used against specialized armed security forces is the ability to demand either oral or written explanations from the controlled entity and security personnel. The controllers may also demand access to or inspection of security records from persons authorized to keep or handle such records.\(^{64}\) At the same time, persons authorized to control may record the course of all control activities by means of audio-visual techniques.\(^{65}\)

Considering the diversity of the objectives of the control carried out by the licensing authority and the entities authorized to supervise specialized armed security forces, the differences occurring within the catalogue of control measures granted to them must be considered justified.

### Supervision measures

The control process is a source of information for supervision authorities on whether and, if so, to what extent and why there were discrepancies between the existing state and the expected state in the controlled area of activity. If deviations from the benchmark, which is the criterion for control, are found, the supervisory authorities are empowered to apply corrective measures.

The licensing authority has the most far-reaching means of responding to irregularities found during controls. They may summon the licensee to rectify irregularities, issue a decision to limit the license or revoke it.\(^{66}\)

In a situation where the irregularities are not of a gross nature, the licensing authority may call on the entrepreneur to remove them within a specified period of time. If the licensee, despite such a request, does not remove the factual or legal state of affairs that is inconsistent with the conditions set forth in the license or with the regulations that govern the licensed business, the licensing authority is obliged to issue a decision to change the scope of the license or revoke it. The choice between limiting or revoking a license is up to the licensing authority and depends on an individual assessment of the circumstances of the specific case.

The more lenient measure of a demand for rectification cannot be applied if the aforementioned violation is of a flagrant nature. The literature emphasizes that a violation can be considered flagrant when the wrongful act of an entrepreneur exercising licensing powers is characterized by obviousness, which results from his full awareness of the violation of the rules, high intensity of bad will, a significant degree of exceeding the norms or a multiplicity of prohibited actions. These issues should be assessed individually.\(^{67}\) In the case of such control findings, the supervisory authority is obliged to directly apply the far more severe measure of either restricting or revoking the license. The same decision must be taken by the author-

\(^{64}\) Article 43(2)(3) and Article 43a(9)(5) of the Act on the security of people and property.

\(^{65}\) Article 43a(9)(7) of the Act on the security of people and property; section 7 of the regulation of the Ministry of Interior on the supervision of the National Police Headquarters over specialized armed security forces.

\(^{66}\) Article 23d and Article 22 of the Act on the security of people and property.

ity if the control findings show that the licensed security company has not taken out mandatory liability insurance for damage caused in connection with its protection of persons and property. Regardless of the above, the basis for mandatory revocation of a license is the control findings, which showed that a final judgment has been issued prohibiting the entrepreneur from carrying out licensed business activities; the entrepreneur — despite the demand of the licensing authority — has not started licensed business activities within the prescribed period, or has permanently stopped carrying out licensed business activities.

In addition, depending on the assessment of the control findings, the licensing authority may revoke the license or change its scope if it determines that the licensee's activities pose a threat to the defence and security of the state or the safety of citizens, or cause a threat to public order. Optional restriction or revocation of the license is also possible if the control reveals that the entrepreneur has not informed the licensing authority within the statutory deadline of a change in the data specified in the license, a state of bankruptcy or liquidation has been declared against the entrepreneur; a decision has been issued stating the inadmissibility of exercising rights from the entrepreneur's shares or stocks. The last reason that allows a decision to revoke or limit a license is when the supervisory authority determines that the entrepreneur has allowed a person who does not have a valid entry on the list of qualified physical security or technical security personnel to perform the tasks of a qualified physical security or technical security employee.

In turn, the primary means of responding to the irregularities found during the inspection activities carried out by the supervisory authorities of specialized armed security forces are written recommendations aimed at removing the irregularities and bringing the activities of the inspected force into compliance with the law. A special situation arises when a control reveals that the activities of the internal security service are carried out in contravention of the security plan. In such a case, the regional police commander does not issue recommendations, but obligatorily revokes the permit for its operation. The commander is obliged to issue such a decision also if the entity, which, as a result of the control, was obliged to remove gross deficiencies or irregularities in the organization of the internal security service, did not do so within the prescribed period of time. Withdrawal of approval to operate is a measure that can only be applied to internal security services that are supervised by the Commander in Chief of the Police.

68 The mentioned information obligation of the entrepreneur, including its scope and timing, is regulated in Article 18 of the Act on the security of people and property.
69 Such a decision may be issued by the minister responsible for state assets, the minister responsible for maritime affairs and the Minister of Defence under the provisions of the Act of July 24, 2015 on the control of certain investments (consolidated text: Dz. U. 2023, item 415).
70 The basis for the application of this measure by the Commander in Chief of the Police is Article 43(2)(5) of the Act on the security of people and property, the Minister of Defense — Article 43a(2)(4) of the Act on the security of people and property, and the Commander in Chief of the Border Guard — Article 43a(2)(4) in relation to Article 44a(1) of the Act on the security of people and property.
71 Article 11(2)(3 and 4) of the Act on the security of people and property. An administrative decision is issued to revoke the consent, which can be appealed to the Commander in Chief of the Police.
Notwithstanding the above, failure to implement recommendations that have been made under the supervision of the Commander in Chief of the Police or the Minister of Defense is subject to criminal sanctions.\(^72\) The act on the security of people and property, on the other hand, does not specify the consequences associated with failure to implement the recommendations of the Commander in Chief of the Border Guard. It should be assumed that this is the result of the premise that the President of the Civil Aviation Authority plays the most important role in the supervision of security control in civil aviation. The Border Guard, in the event of serious deficiencies in security control, immediately directs requests for their correction to the airport operator, and notifies the President of the Office. In turn, the President provides the Border Guard with information on what action has been taken against the airport manager in connection with the deficiencies uncovered by its officers.\(^73\)

**Conclusions**

Supervision of the activities of the private security industry is undoubtedly one of the important responsibilities of the state. Its inadequate organization should be regarded as a vulnerability in the state security system, which occurs in the security and public order sector. Taking into account the systemic aspect, it can be said that the supervision in question has been properly placed in the subjective structure of the security system of the Polish state. Supervision of the licensed business activities of entrepreneurs providing security services for persons and property has been entrusted to the minister who is responsible for the state's internal affairs. In turn, professional supervision of the performance of security activities by specialized armed security forces is exercised, as a rule, by the Commander in Chief of the Police, which is a central body of government administration subordinate to the minister responsible for internal affairs. At the same time, there are two exceptions in the exercise of the above professional supervision, which relate to the specific location of the supervised security activity. In the case of the protection of areas, facilities and equipment that belong to organizational units subordinated, subservient or supervised by the Minister of Defence, professional supervision is entrusted to this Minister (supervision exercised through the Military Police), and in the case of the performance of tasks related to security control at airports — to the Commander in Chief of the Border Guard (supervision performed in cooperation with the President of the Civil Aviation Authority). All of the above-mentioned supervisory authorities are either supreme or central government administrative bodies that are responsible for ensuring public safety and order within the scope of their jurisdiction. It must also be assumed that state supervisory authorities have been equipped with means of control and supervision that are adequate to carry out the tasks assigned to them (establishing the facts and rectifying the irregularities found). At the same time, the dissimilarities that exist within the catalogue of these

\(^{72}\) Article 50a of the Act on the security of people and property.

\(^{73}\) Cf. Article 186b(3)(4) of the Aviation Law and Section 81(2) of the National Civil Aviation Security Program.
measures, find their justification in the diversity of the objectives of supervision exercised by these authorities. Taking into account the above, it should be concluded that the systemic solutions adopted by Poland in terms of state supervision of the private security sector are correct. At the same time, it should be emphasized that a positive assessment of systemic solutions, cannot be equated with a positive assessment of the performance of the said supervision in practice. A separate study should be devoted to this issue.

References


Streszczenie. Przedmiotem opracowania jest prywatny sektor ochrony osób i mienia w Polsce, celem zaś prowadzonych w nim rozważań jest prezentacja oraz ocena państwowego systemu nadzoru nad tym sektorem. Do podstawowych metod, które zostały wykorzystane do osiągnięcia zakładanego celu należały metody teoretyczne, wśród których wypada wymienić analizę dogmatyczno-prawną, krytyczną analizę literatury oraz analizę dokumentów. We wstępnej części artykułu przedstawiono ogólną charakterystykę prywatnej działalności ochroniarskiej oraz określono istotę nadzoru państwa nad tą działalnością i uzasadniono potrzebę jego sprawowania. Natomiast jego zasadniczą część poświęcono rozważaniom na temat organizacji nadzoru państwa nad działalnością ochroniarską w Polsce. W tym względzie zostały przedstawione organy nadzoru, ich przedmiotowa i podmiotowa właściwość, a także dostępne tym organom środki kontroli i nadzoru. Podsumowanie prowadzonych w artykule ustaleń zostało zawarte we wnioskach końcowych. Zgodnie z nimi, omawiany nadzór został właściwie umiejscowiony w podmiotowej strukturze systemu bezpieczeństwa polskiego państwa, zaś państwowe organy nadzoru zostały wyposażone w środki kontroli i nadzoru, które są odpowiednie do realizacji stawianych im zadań.

Resumen. El objeto del presente estudio es el sector privado de la seguridad en Polonia, mientras que el objetivo del debate es exponer y evaluar el sistema estatal de supervisión de este sector. Entre los métodos elementales aplicados para alcanzar el objetivo fijado figuran los métodos teóricos, incluidos el análsis dogmático y jurídico, el análisis crítico de la bibliografía y el análisis documental. En la parte introductoria del artículo se presentan las características generales de las actividades de seguridad.
privada, se identifica la esencia de la supervisión estatal de dichas actividades y se explica la necesidad de dicha supervisión. Su parte central, a su vez, está dedicada a consideraciones sobre la organización de la supervisión estatal de las actividades del sector de la seguridad en Polonia. En ese sentido, se describen los órganos de supervisión, su competencia como sujeto y objeto, así como los medios de control y supervisión de que disponen dichos órganos. Las conclusiones finales del artículo incluyen un resumen de los resultados obtenidos. Según ellas, la supervisión examinada se ha situado adecuadamente en la estructura subjetiva del sistema de seguridad del Estado polaco, mientras que los órganos estatales de supervisión se han dotado de medios de control y supervisión adecuados para el desempeño de las tareas que les han sido encomendadas.


Резюме. Данная статья посвящена частному сектору защиты людей и имущества в Польше, а целью рассуждений является представление и оценка государственной системы надзора за этим сектором. Для достижения поставленной цели использовались теоретические методы, среди которых догматический и правовой анализ, критический анализ литературы и анализ документов. Во вступительной части статьи представлена общая характеристика частной охранной деятельности, определена сущность государственного надзора за ней и обоснована его необходимость. Основная часть статьи, в свою очередь, посвящена рассмотрению организации государственного надзора за частной охранной деятельностью в Польше. В этой связи представлены органы надзора, их предметная и объектная юрисдикция, а также средства контроля и надзора, имеющиеся в распоряжении этих органов. Итоги проведенного исследования приводятся в заключительной части статьи. Согласно им, рассматриваемый надзор занимает надлежащее место в субъектной структуре системы безопасности польского государства, а государственные надзорные органы оснащены средствами контроля и надзора, адекватными для реализации поставленных перед ними задач.