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CONSTITUTIONAL STATUS OF POLISH INTELLIGENCE SERVICES SINCE 1989 – INTELLIGENCE VS. THE POLICE¹

ABSTRACT The aim of the paper is to focus on two characteristic features which make it difficult to define precisely the constitutional position of Polish intelligence services. First of all, there is no concise concept referring to the place and role that Polish intelligence services should play after 1989. Secondly, intelligence services lack clear distinction from police services. Not only are these services organized in a similar way but also their tasks and powers are alike. Here the question arises: where is the border between intelligence services and police services which were created for different purposes and which have other methods of interfering in individual's rights and freedom.

Key words: intelligence services, internal security, law enforcement and police

Pursuant to Polish legislation, intelligence services include: the Internal Security Agency (Polish abbreviation: ABW), the Foreign Intelligence Agency (AW), the Central Anti-Corruption Bureau (CBA), the Military Counterintelligence Service (SKW) and the Military Intelligence Service (SWW).² Complex presentation of their constitutional status is not the purpose of this work.³ The article aims at discussing two char-

¹ This paper has been realized within the project no 2012/05/N/HS5/02373 financed by National Science Centre.

² See e.g. article 11 the Law of 24 May 2002 on the Internal Security Agency and the Foreign Intelligence Agency.

³ Comprehensive description of constitutional status of intelligence services, see i.a. A. Gruszczak, "The Polish Intelligence Services", in T. Jäger, A. Daun (eds.), *Geheimdienste in Europa. Transformation, Kooperation und Kontrolle*, Wiesbaden 2009; A. Rzepliński, "Security Services in Poland and Their Oversight", in J.-P. Brodeur, P. Gill, D. Töllborg (eds.), *Democracy, Law and Security. Internal Security Services in Contemporary Europe*, Hampshire–Burlington 2003; A. Zybortowicz, "An Unresolved

acteristic features which make it difficult to define precisely the constitutional position of the intelligence services. First of all, there is no concise concept referring to the place and role that Polish intelligence services should play after 1989. Secondly, intelligence services lack clear distinction (especially the Internal Security Intelligence and the Central Anti-Corruption Bureau) from the Police, the Border Guard or the Military Gendarmerie. Not only are these services organized in a similar way but also their tasks and powers are alike. Here the question arises: where is the border between intelligence services and police services which were created for different purposes and which have other methods of interfering in individual's rights and freedom?

Intelligence services in Poland were frequently disbanded and replaced with new, similar structures. Such practice is a proof that their role is neither stable nor regulated. At the beginning of the 1990s there were two secret service institutions in Poland. The first was the Office for State Protection (UOP) created by virtue of the act of 6 April 1990 on the Office for State Protection. This institution was responsible for civil intelligence and counterintelligence. Under the previous Communist regime such tasks were performed by the Security Service (SB). The creation of UOP in 1990 caused a considerable change. That entity had an independent organizational structure and was separated from both the Ministry of Internal Affairs and the Police.⁴ Before that, the police (Civic Militia) and SB functioned within one hierarchized structure – the Ministry of Internal Affairs.

When it comes to military intelligence services, II Department of Intelligence and Counterintelligence of the General Staff in the Polish Army functioned for 13 months and after that on 22 August 1991 the Military Information Services (WSI) were created. The organization which was supposed to be dealing with military counterintelligence became directly subordinated to the Ministry of National Defense and existed within its structure as the Inspectorate of Military Information Services. The structure of WSI was based on the inspectorate, field organizational units and special organizational units. It is worth noting that till the very end of its existence WSI was an integral part of the Polish Armed Forces.⁵ It was formed by soldiers, including its chief officer who was not a central government administration authority. Not until 2003 was constitutional status of WSI regulated by the law. Before that, its organization and functioning were mostly based on regulations of numerous normative acts while its constitutional foundation remained limited.⁶ With reference to the second problem, it should be underlined that in 1996 the Constitutional Tribunal resolved a question of granting police authorities to intelligence services. It was then clearly stated that WSI was not

Game: The Role of the Intelligence Services in the Nascent Polish Democracy”, in H. Born, L.K. Johnson, I. Leigh (eds.), *Who's Watching the Spies? Establishing Intelligence Service Accountability*, Washington 2005; M. Kolaszyński, *Status ustrojowy polskich służb specjalnych po 1989 roku*, Kraków 2016.

⁴ See S. Płowucha, *Zagadnienia prawne organizacji i funkcjonowania Policji*, Szczytno 1995, p. 6.

⁵ I.K. Szostek, *Służby specjalne w systemie bezpieczeństwa Rzeczypospolitej Polskiej na przykładzie Wojskowych Służb Informacyjnych*, Warszawa 2012, p. 59.

⁶ See more J. Niedziela, “Nowe podstawy prawne działania Wojskowych Służb Informacyjnych”, *Wojskowy Przegląd Prawniczy*, vol. 4 (2003), pp. 34-45.

entitled to such powers. According to the Tribunal, the legislator granted the Military Gendarmerie rights to conduct criminal investigation activities in Polish Armed Forces.⁷ Since that time, the idea of granting such authorities to military intelligence services exists only in the literature and can be considered a minority view.⁸

It was quite common for both UOP and WSI to blend intelligence and counter-intelligence within one structure – civil in the first organization and military in the second one. As a matter of fact, civil secret services were first to undergo separation of intelligence and counterintelligence structures. It took place in 2002 when by virtue of act on the Internal Security Agency and the Foreign Intelligence Agency of 24 May 2002 UOP was replaced with ABW and AW. Pursuant to that act, ABW was supposed to be responsible for internal security of the state and its constitutional order (section 1). AW was expected to deal with external security (section 2).

The split in military intelligence service occurred four years later. In 2006 WSI was disbanded and replaced with two new institutions (by virtue of the act on Military Counterintelligence and Military Intelligence of 9 June 2006): SKW and SWW. Contrary to WSI, these organizations were excluded from the armed forces structures⁹ and resembled civil intelligence services in terms of their structure. The heads of these institutions were granted the status of central government administration authority. What is more, not only soldiers but also officers were allowed to serve the duty in SKW and SWW. However, police powers were still not granted to military intelligence services.

The same year CBA was granted the status of intelligence service. CBA was created by virtue of the act on the Central Anti-Corruption Bureau of 9 June 2006. It is worth noting that this institution is supposed to fight corruption in public life and its responsibilities are not connected with intelligence or counterintelligence, unlike the rest of special services. The question whether CBA should function independently arose while working on the regulation which was expected to define the status of the bureau. The idea of including CBA into the Police structures was quite popular. It was supposed to have a similar status to the Central Bureau of Investigation (Polish abbreviation: CBŚ) at that time. This way, the structures of the Police would have consisted of two specialized units of high autonomy responsible for fighting the most serious organized crime (CBŚ) and economic crime (CBA). Supporters of that idea claim that incorporating CBA into the Police structures would not only provide a wider access to all data and extensive logistic base but also reduce its operating costs. Additionally, the organization would remain indifferent to any political pressure.¹⁰

⁷ *The Act of the Constitutional Tribunal of 16 January 1996*, file ref. no. W 12/94.

⁸ See K. Kula, "Obszar działania Służby Kontrwywiadu Wojskowego", *Wojskowy Przegląd Prawniczy*, vol. 4 (2010).

⁹ However, according to the Art. 3, section 8 on general defence obligation of 21 November 1967, during general or partial mobilization or during the wartime, SKW and SWW automatically become a part of the Armed Forces.

¹⁰ See J. Paradowska, "CBA w ręce policji", *Polityka*, no. 50 (2012), p. 10.

Any questions concerning which solution is more reasonable, whether intelligence and counterintelligence should be operating within one structure or should be split are beyond the scope of this work.¹¹ Both solutions exist in democratic countries. For instance, the Canadian Security Intelligence Service is accountable for both intelligence and counterintelligence operations.¹² Meanwhile, in Germany the Federal Intelligence Service (*Bundesnachrichtendienst*) deals with intelligence while counterintelligence is run by the Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*).¹³ Here, it shall be emphasized that since 1990 Polish intelligence services have been undergoing frequent structural changes. Within the recent 25 years, two intelligence services were transformed into five agencies: ABW, AW, CBA, SKW and SWW. As a result, the issue of separating special and police services stopped being a concern for AW which was deprived of police-like privileges. As it was mentioned before, such privileges also did not apply to military intelligence services – SKW or SWW.

Along with structural changes, the status of the heads of intelligence services was also being remodeled. Initially, the head of UOP had central government administration authority. Such status was supposed to guarantee political neutrality and was similar to the status of the Police Commander in Chief as well as the Border Guard Commander in Chief. This approach was abandoned between 2001 and 2002 when ABW and AW were created and politicians were appointed as the heads of these organizations. According to the draft of the act on the Internal Security Agency and the Foreign Intelligence Agency of 24 May 2002, the heads of both institutions were given central government administration authority (Art. 3, section 1) as the secretaries of state (Art. 14, section 1). The explanatory statement of the bill claims that politically impartial chiefs of intelligence services are a myth and ‘propaganda slogan’ which is especially visible in terms of appointing candidates for these positions.¹⁴

In the end, the Constitutional Tribunal¹⁵ ruled that Art. 14, section 1 of the act on ABW and AW is not in line with Art. 103, section 1 of the Constitution in terms of granting the title of secretaries of state to the chiefs of ABW and AW.¹⁶ According to

¹¹ See P. Gill, *Policing Politics. Security Intelligence and the Liberal Democratic State*, London 1994, pp. 208-209; M. Minkina, *Sztuka wywiadu w państwie współczesnym*, Warszawa 2014, pp. 370-371.

¹² C. Forcese, “Parliamentary and Specialised Oversight of Security and Intelligence Agencies in Canada”, in A. Wills, M. Vermeulen (eds.), *Parliamentary Oversight of Security and Intelligence Agencies in the European Union*, Brussels 2011, p. 318.

¹³ A. Daun, “Die deutschen Nachrichtendienste”, in T. Jäger, A. Daun (eds.), *Geheimdienste in Europa...*, pp. 59-64; P. Ebert, *Nachrichtendienste als Regierungsinstrument. Zwischen gouvernementaler Steuerung und rechtsstaatlicher Kontrolle*, Jena 2009, p. 3.

¹⁴ Sejm RP, *Rządowy projekt ustawy o Agencji Bezpieczeństwa Wewnętrznego, Agencji Wywiadu oraz zmianie niektórych ustaw (druk 276)*, Warszawa 2002. See M. Bożek, “Usytuowanie służb specjalnych w systemie organów państwowych”, in idem et al., *Służby specjalne w strukturze władz publicznych. Zagadnienia prawnoustrojowe*, Warszawa 2014, pp. 55-56.

¹⁵ *The ruling of the Constitutional Tribunal of 20 April 2004*, file ref. no. K 45/02.

¹⁶ *The Constitution of the Republic of Poland of 2 April 1997*.

the Constitutional Tribunal, such a practice was a way of evading the constitutional regulation which does not allow connecting a parliamentary seat with employment in government administration. The Tribunal claimed that the only legal effect of such a title was the possibility to connect the function of the head of the agency with a parliamentary seat. In fact, the essence of the regulation was not to modify the status of the chiefs of agencies in terms of the public law (which resembles, for instance, the status of the Police Commander in Chief). Also, it was not about providing them with some special responsibilities and powers since all of them can be found in either the act on ABW and AW or general regulations on privileges of central government administration agencies.¹⁷

In accordance with current norms, the Prime Minister exercises significant freedom when it comes to appointing candidates as the chiefs of the above mentioned services. Recent years have shown that these positions are usually held by high-rank officials of intelligence or other uniformed services as well as people without any experience in such institutions, including politicians.

The Polish intelligence services also underwent frequent changes of personnel. Such decisions are usually politically based and do not respect the merits of the matter. This is what makes intelligence services different from police services. Political disputes concerning intelligence services' personnel started at the turn of the 1980s and 1990s. The first discussion brought up the question of how to deal with people who served their duty in the Security Service (SB) in the times of the Polish People's Republic. This debate concentrated on civil intelligence services. On the contrary, at that time military intelligence services did not undergo such an extensive and formal process of staff verification. In the following years, politicians visibly interfered in the personnel working for intelligence services. All personal changes were strictly connected with parliamentary elections. Based on their results, government coalitions were later created.¹⁸

In military intelligence services such extensive and institutionalized personnel verification was not conducted. There were no clear rules about recruiting for WSI and the majority of the positions were given to soldiers of military intelligence. According to Andrzej Żebrowski, as a result of military intelligence services' restructuring between 1990 and 1992, 798 soldiers of military intelligence and counterintelligence were dismissed and transferred beyond the structures of WSI.¹⁹ Since there were no clear rules about recruiting for WSI in 1991, there was a popular belief that this institution is somehow connected with organizations from the previous political system. Such a cooperation was supposed to include subjection to their Soviet and later Russian equiva-

¹⁷ The ruling was acknowledged in the doctrine, see P. Radziewicz, "Głosa do wyroku Trybunału Konstytucyjnego z 20 kwietnia 2004 r. (sygn. akt K 45/02)", *Przegląd Sejmowy*, vol. 6 (2004), pp. 163-171.

¹⁸ D. Rowicka, "Służby specjalne w Polsce", in J. Widacki, J. Czapska (eds.), *Bezpieczny obywatel – bezpieczne państwo*, Lublin 1998, p. 110; J. Widacki, "System bezpieczeństwa wewnętrznego – ewolucja struktur i funkcji", in L. Kolarska-Bobińska (ed.), *Druga fala polskich reform*, Warszawa 1999, pp. 224-225.

¹⁹ A. Żebrowski, *Ewolucja polskich służb specjalnych. Wybrane obszary walki informacyjnej (wywiad i kontrwywiad w latach 1989-2003)*, Kraków 2005, pp. 295-297.

lents.²⁰ As a matter of fact, this opinion had a significant influence on personnel verification in 2006 – 15 years after WSI was created.

Furthermore, in the past 25 years intelligence services have been controlled by various authorities of different political status. Civil intelligence services were subjected to the Minister of Internal Affairs, the Prime Minister and the Minister-Coordinator of Special Services. At the same time, military intelligence services were supervised by the General Staff and the Minister of National Defense. Here as well, political factors were the main motive of next reforms. This is another feature which distinguishes special services from police services. Since the beginning of the 1990s the latter have been significantly more stable.

Another factor which determines constitutional status of intelligence services is their scope of responsibilities. Constitutional position of these institutions is defined by their intelligence and counterintelligence duties. Carrying them out enables intelligence services to stand close to the center of political power. Such an arrangement is the only way which makes them perform their essential function – supporting the decision-making process of the government using accessible and analyzed data.²¹

However, intelligence and counterintelligence duties are not the only tasks that Polish intelligence services are responsible for. It is common that their responsibilities involve tasks which should nominally belong to police authorities. This in turn causes lack of clear division between these organizations. Nowadays, there are two Polish special services which perform duties typical for police services. ABW, the first one, took over police tasks from UOP.²² The second institution is CBA. As it was mentioned before, none of its duties can be involved in the scope of typical intelligence or counterintelligence functions. Therefore, the question arises: why was that institute granted a status of intelligence service since it does not deal with either intelligence or counterintelligence? As a matter of fact, it is frequently explained that this agency is supposed to fight corruption and economic crime but only when there is a real threat to the state safety. The former head of CBA, Paweł Wojtunik, confirmed such an approach by saying that the institution was trying to run preparatory and control procedures of high gravity in order not to waste energy and resources on minor issues.²³ On the other side, he also once claimed that CBA took proceedings in all cases, no matter if they were serious or not.²⁴ In this case, the bureau functions as a coordinator in the matters of cor-

²⁰ J. Jakimczyk, "Jednostka nr 3362", *Rzeczpospolita*, 16 July 2003.

²¹ M. Minkina, *Sztuka wywiadu...*, p. 170.

²² See B. Dolnicki, "Policyjne funkcje państwa w Polsce", in K. Nowacki (ed.), *Problemy prawa angielskiego i europejskiego oraz reformy w Europie Środkowej (Polska, Węgry)*, Wrocław 2000, pp. 395-399.

²³ Senat RP, *Sprawozdanie Stenograficzne z 55. posiedzenia Senatu Rzeczypospolitej Polskiej w dniach 5 i 6 czerwca 2014 r.*, Warszawa 2014, p. 62.

²⁴ It is worth mentioning that in 2013 there were 13 706 signals reported to CBA about potential cases of corruption. In the year before there were 5 thousand fewer cases like that, see Centralne Biuro Antykorupcyjne, *Informacja o wynikach działalności Centralnego Biura Antykorupcyjnego w 2013 roku*, Warszawa 2014, p. 14.

ruption and transfers some cases to the Police.²⁵ What is more, the head of CBA said that the bureau also took care of monitoring economic threats and updating the Prime Minister about them. This would prove it also runs analytical activities which are common for intelligence services.²⁶

The fight against organized crime is one of ABW's duties which is worth mentioning because in this aspect the agency competes with the Police, especially the Central Bureau of Investigation (CBS). Another task, which is common for many different institutions, is combatting economic crime. It is assigned to the Police, the Border Guard, the National Revenue Agency (KAS) and even CBA. Also fighting with corruption is a duty which may cause some disputes about the scope of responsibilities. In the last two cases, such a dispute occurs not only between intelligence services and other internal security services but also in ABW and CBA. ABW was granted these duties because, similarly to CBA, it is expected to deal with the most serious crimes which pose a danger to constitutional order or to general independence in the international meaning.

There is also one more question which arises from the issue of police duties being assigned to intelligence services: should they be so close to the center of political power? When it comes to police duties, such a close connection to government is not necessary. These tasks do not require from the services to provide politicians with up-to-date analyses and data. Quite on the contrary, such an arrangement might lead to excessive political interference in some preliminary proceedings in criminal cases and this area requires a strict control over uniform services by the public prosecutor. Here, it is vital to see how ABW and CBA managed to cumulate various privileges. They are entitled to conduct preliminary investigation activities and analytical and informative tasks which are common for information services. They are also granted control and criminal investigative powers, typical for public administration. At the same time, SKW is permitted to conduct all the activities, except for criminal investigative ones. Intelligence services (AW and SWW) are only entitled to conduct preliminary investigation activities and analytical and informative tasks.

The fact that intelligence services are allowed to lead analytical and informative activities does not raise any doubt. These duties involve processing data and transferring the most essential ones (important from the security perspective) to the supreme authority in the country. Such privileges are typical only for intelligence and counterintelligence, not for police services. Preliminary investigation activities form the second pillar of special services' functions. They enable the services to secretly obtain some information which are essential from the political, military and economic perspective.²⁷ However, this scope of duties is also exercised by police services, for instance in order

²⁵ Senat RP, *Sprawozdanie Stenograficzne z 55. posiedzenia...*, p. 72.

²⁶ The scope of this analytical activity in 2013 were represented in the form of 19 studies addressed to the Prime Minister, see *ibid.*, pp. 64-65; Centralne Biuro Antykorupcyjne, *Informacja o wynikach działalności...*, p. 14.

²⁷ J. Konieczny, "Czynności operacyjno-rozpoznawcze", in J. Widacki (ed.), *Kryminalistyka*, Warszawa 2008, p. 125; cf. S. Hoc, S. Zalewski, "Czynności operacyjno-rozpoznawcze organów państwa: cele,

to discover crimes. To sum up, in Poland nine different agencies might perform preliminary investigation activities.²⁸ Five of them are special services, the remaining four include: the Police, the Border Guard, the Military Gendarmerie and the National Revenue Agency. These nine, or sometimes ten,²⁹ services are entitled to perform very similar preliminary investigation activities. Considering only normative acts, it cannot be said that intelligence services and police services have managed to create separate standards in the previously described matters.

Apart from these basic powers, ABW and CBA are also entitled to run criminal investigation activities, which is more common for police than intelligence services.³⁰ As the Constitutional Tribunal ruled, investigation activities are an integral part of crime detection.³¹ ABW and CBA, as well as the Police, take part in preliminary proceedings in criminal case and their tasks are to conduct criminal proceedings under the supervision of the prosecutor. In order to do so, officers are allowed to use some means of coercion. Such privileges are not indispensable for intelligence or counterintelligence agencies in a traditional meaning. It is emphasized that being entitled to police powers on such a scale should be regulated by a whole set of normative rules. In that matter, an officer holds constitutional rights related to criminal proceedings, especially the right to a fair trial and disclosure principle of court proceedings (Art. 45).³² Such a set of rules should also include a principle which would allow any police interference in case there is an actual breach of binding order. As a result, no police actions would be allowed when there is only a hypothetical threat to the state security and public order.³³ Naturally, monitoring 'hypothetical' threats to the state safety constitutes an elementary rule of intelligence and counterintelligence activities.

Three Polish intelligence services (ABW, CBA, SKW) also conduct control activities. In case of counterintelligence, the powers are strictly connected with protection of classified information and are given to officers in accordance with the act on protection of classified information of 5 August 2010.

zakres i tryb stosowania na przykładzie służb specjalnych", in M. Gajos, S. Zalewski (eds.), *Ochrona informacji niejawnych i biznesowych. Materiały I Kongresu*, Katowice 2005, pp. 74-96.

²⁸ According to one of the concepts presented in the source literature, all formations entitled to perform preliminary investigation activities are considered to be special services, see i.a. S. Zalewski, *Służby specjalne w państwie demokratycznym*, Warszawa 2005, pp. 22-30.

²⁹ Additionally, the Government Protection Bureau (BOR) is also entitled to conduct some preliminary investigation activities although it does not hold any general power to perform such duties, see J. Mąka, "Kontrola operacyjna i podsłuch – ocena na tle praktycznego stosowania", *Przegląd Bezpieczeństwa Wewnętrznego*, vol. 4 (2011), p. 45.

³⁰ M. Bożek, "Współczesny model polskich służb. Służby informacyjne czy policyjne?", *Zeszyty Naukowe AON*, vol. 1 (2005), p. 93.

³¹ *The Act of the Constitutional Tribunal...*

³² See e.g. B. Przybyszewska-Szter, "Wolności i prawa osobiste", in M. Chmaj (ed.), *Wolności i prawa człowieka w Konstytucji Rzeczypospolitej Polskiej*, Kraków 2006, p. 118.

³³ See B. Dolnicki, "Policyjne funkcje państwa...", pp. 396-397.

However, control activities run by CBA are of different character. They clearly derive from the act on CBA and are inseparably connected with overall activity of that institution. Granting such rights to Bureau never spurred any controversy while discussing the draft of the act on CBA in 2006 – there was a general belief that this privilege is complementary to other rights which were supposed to be given to that institution. According to the explanatory statement of the bill, joining preliminary investigation activities, criminal investigation and control actions will make the Bureau highly effective, especially after control arrangements are confirmed and improved in preparatory proceedings.³⁴ Therefore, control activities were supposed to become a basis or an introduction for further steps connected with criminal investigation actions taken by CBA agents. Cumulating such responsibilities in the hands of one organization raises some objections in the doctrine. The most visible issue here is the lack of objectivity in the control, especially when it is focused on prosecution of crimes.³⁵ Naturally, the main purpose of such activities makes CBA more similar to police structures rather than intelligence or counterintelligence.

Such resemblance between special and police services makes it difficult to point out to common structural and functional features of Polish special services. Comparing to other institutions of government administration, this peculiarity is mostly visible in exercising supervision and control. In this case, it is therefore quite unusual to create special institutions which are supposed to exercise such powers. However, organizations like that started to appear at the turn of the 1980s and 1990s. Changes in political system at that time made it possible to incorporate intelligence services into the laws of democratic country. Current institutions of such type were created in the mid-1990s: the Collegium for Secret Services subject to the Cabinet and the Sejm Committee for Secret Services.³⁶ It is worth noting that these organizations are close not only to the executive and legislative authority in general but also to the institutions (the Cabinet and the Sejm) which are a part of current political battles. Special services are therefore located close to the center of the power, which makes them more vulnerable to any changes on the political arena.

Apart from those two institutions, control system over intelligence services does not really differ from the one of public administration. Intelligence services are a part of government administration and to a significant extent are incorporated into constitutional solutions which do not distinguish them from other state authorities. The

³⁴ Sejm RP, *Rządowy projekt ustawy o Centralnym Biurze Antykorupcyjnym (druk 275)*, Warszawa 2006.

³⁵ P. Szustakiewicz, “Centralne Biuro Antykorupcyjne jako instytucja kontroli”, *Kontrola Państwowa*, vol. 3 (2008), p. 76.

³⁶ See more P. Czarny, “Sejmowa Komisja do Spraw Służb Specjalnych na tle ogólnych dylematów parlamentarnej kontroli tych służb”, *Przegląd Sejmowy*, vol. 3 (2008); P. Radziejewicz, “Uprawnienia, środki, działania oraz prawne podstawy funkcjonowania Sejmowej Komisji do Spraw Służb Specjalnych”, *Przegląd Legislacyjny*, vol. 2 (2006); A. Żebrowski, “Parlament a służby specjalne w Polsce (zarys problematyki)”, in M. Grzybowski, G. Kuca, P. Mikuli (eds.), *Ustroje. Historia i współczesność. Polska, Europa, Ameryka Łacińska. Księga jubileuszowa dedykowana profesorowi Jackowi Czajowskiemu*, Kraków 2013.

Constitutional Tribunal is a significant part of the control system. Its most important role is to decide whether a particular law is compliant with the constitution. In this matter, there are naturally no exceptions when it comes to laws concerning structure and functioning of intelligence services. The Ombudsman is granted surveillance authority as well. As a matter of fact, it has frequently intervened in activities of intelligence services.³⁷

Similar solutions can also be observed in case of other uniform services, the Police and the Border Guards in particular. It mostly refers to judicial control over some preliminary investigation activities and concerns all nine formations which are entitled to exercise operational control.³⁸ These facts also relate to the Supreme Audit Office (NIK). During numerous audits, NIK never differentiated intelligence from police services by running, for instance, an audit referring to the quality of new ABW, CBA or Police officers.³⁹ There are also no distinctive features in prosecutor supervision over preparatory proceedings run by the Police, ABW or CBA.⁴⁰

To summarize, it is problematic to point out structural and functional elements which would be common for all five Polish intelligence services and would expressly distinguish them from other uniform services. They are organized in a comparable way, partially responsible for the same tasks and are entitled to exercise preliminary investigation activities under the same conditions. Additionally, ABW and CBA are granted the rights typical for police services. One fundamental factor which differentiates intelligence services from police ones is the fact that intelligence services are subject to close monitoring. This control is exercised by: the Collegium for Secret Services and the Sejm Committee for Secret Services. However, it is crucial to notice that both institutions operate within executive and legislative authority which is where current political battles take place. Other institutions of control treat intelligence services under the same conditions as other state authorities.

It seems that characteristic features of intelligence services might be found in the area of political practice. These services are located close to the center of power and are therefore more vulnerable to any changes on the political arena. To some extent this would explain why common solutions in terms of supervision and surveillance are

³⁷ See e.g. Rzecznik Praw Obywatelskich, "Informacja Rzecznika Praw Obywatelskich za rok 2012", *Biuletyn Rzecznika Praw Obywatelskich*, vol. 1 (2013), p. 30; Rzecznik Praw Obywatelskich, "Informacja Rzecznika Praw Obywatelskich za rok 2004", *Biuletyn Rzecznika Praw Obywatelskich*, vol. 50 (2005), pp. 39-40.

³⁸ For a broader discussion of this topic, see M. Kolaszyński, "Kontrola zewnętrzna nad niektórymi czynnościami operacyjno-rozpoznawczymi", *Bezpieczeństwo. Teoria i Praktyka*, vol. 3 (2012).

³⁹ See e.g. Najwyższa Izba Kontroli, *Informacja o wynikach kontroli. Nabór, postępowanie kwalifikacyjne i szkolenie nowo przyjętych funkcjonariuszy*, Warszawa 2013; Najwyższa Izba Kontroli, *Informacja o wynikach kontroli. Uzyskiwanie i przetwarzanie przez uprawnione podmioty danych z bilingów, informacji o lokalizacji oraz innych danych, o których mowa w art. 180 c i d ustawy prawo telekomunikacyjne*, Warszawa 2013.

⁴⁰ S. Waltoś, P. Hofmański, *Proces karny. Zarys systemu*, Warszawa 2013, pp. 176-177.

created within executive and legislative areas. It is not about controlling intelligence services. It is rather a battle to take control over these institutions. The fact that they are located so close to the center of power explains frequent structural and personal changes which are made by successive ruling parties. Afterwards, ruling politicians are not interested in limiting powers of intelligence services but they rather try to expand their range of responsibilities, including those usually granted to police services.

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