

STATE BORDER PROTECTION FROM THE PERSPECTIVE OF THE TASKS AND FUNCTIONS OF THE BORDER GUARD AND BORDER CHECKPOINTS

Bernard WIŚNIEWSKI*

ABSTRACT

The aim of the article is to present the major issues related to the protection of the Polish border from the perspective of the tasks and functions of the Border Guard and border checkpoints. The present analysis is a result of research conducted with use of theoretical research methods used in the social sciences. The aforementioned research was carried out with the purpose of diagnosing the functioning of the state border protection and traffic control system. The result of the research leads to the conclusion that the Polish border protection and traffic control system is being gradually improved, which is a result of changes in the security environment, primarily related to the emergence of new threats and increasing levels of existing threats. This leads to the expansion of the range of functions performed not by the Border Guard in general, but specifically by border checkpoints, which are closely related to field government and local authority administration bodies. These bodies have a definitive influence on local security, and thus on the security of areas controlled by the Border Guard.

* Prof. Bernard Wiśniewski, Police Academy in Szczytno; correspondence address: Wydział Bezpieczeństwa i Nauk Prawnych, Wyższa Szkoła Policji w Szczytnie, ul. Marszałka Józefa Piłsudskiego 111, 12-100 Szczytno, Poland

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INTRODUCTION

Security is one of the values which

should be particularly protected in democratic states. The basic factors determining security are: effective functioning of public order and law enforcement services, properly functioning judiciary, as well as the ability to effectively predict threats of crime and other pathological phenomena. Thus, one of the most important tasks of state administration is to develop organisational and legal solutions which ensure security, both internal and external¹.

In this context, security should be interpreted as consisting of not only matters related to upholding the legal order specified in the Constitution of the Republic of Poland, but also as protecting the lives, health and property of Polish citizens, as well as public property, from illegal acts perpetrated by potential aggressors or criminals. Currently, security is most generally understood to involve

ensuring the security of a given state by creating conditions such that they enable it to develop its own statehood, be sovereign, have territorial integrity and be free from outside interventions into its internal affairs. These conditions should render it possible to develop a national personality and identity, language, economy, science and other areas of life. Thus, security relates to creating a situation which could ensure the achievement of goals, values and aspirations of a given state or society and its long-term, vital interests. This can be achieved by eliminating sources and causes of internal and external conflicts².

¹ B. Wiśniewski, Z. Piątek, *Wprowadzenie*, In: *Współczesny wymiar funkcjonowania Straży Granicznej*, B. Wiśniewski, Z. Piątek (eds), Warszawa 2007, p. 7.

² W. Malendowski, *Pokój i bezpieczeństwo międzynarodowe*, [in:] *Stosunki międzynarodowe*, W. Malendowski, C. Mojsiewicz (eds), Wrocław 2000, p. 386.

One of the actions taken to ensure state security is the protection of state borders³, which is a multi-layered effort consisting of a series of “administrative and political, health-related and military activities with varying degrees of strictness, carried out by every sovereign state for the purpose of preventing illegal border crossing and certain goods being brought across the border [...], preventing infectious diseases from penetrating the border”⁴.

The state border is “a plane perpendicular to the border line established on the surface of the Earth, separating the territory of one state from that of other states or areas which do not belong to any state (e.g. high seas)”⁵. In relation to the above, it can be said that “the state border is a basic element of statehood, one which should be particularly protected. Thus, the quality of border protection is a very important factor which directly impacts both the internal and external security of the state”⁶. Hence, it follows that border protection relates to externally protecting the state’s territory, which is a multi-dimensional area consisting of land, sea and air space. The classic, nominal definition of the term describes borders as lines which mark the boundaries of a state’s power, or lines separating two territories⁷.

³ According to the binding provisions, the state border is established:

- in land areas and places where the state border crosses standing or flowing bodies of water, if the border reaches the other bank – along a straight line from one sign to the other;
- on rivers, streams, creeks and non-navigable channels – along the middle of the stream bed;
- on navigable rivers – along the middle of the main fairway or along the middle of the main current.

⁴ *Leksykon wiedzy wojskowej*, M. Laprus (ed.), Warszawa 1979, p. 250; Cf. *System ochrony granicy państwowej Rzeczypospolitej Polskiej. Stan obecny i prognozy na przyszłość*, B. Wiśniewski, R. Jakubczak (eds), Szczytno 2015, p. 10.

⁵ *Słownik encyklopedyczny. Geografia*, W. Głuch (ed.), Wrocław 1997–1998, p. 181.

⁶ P. Lubiewski, A. Babiński, *Współpraca transgraniczna a efektywność ochrony granic państwowych*, [in:] *Racjonalizacja zarządzania jednolitymi formacjami umundurowanymi odpowiedzialnymi za bezpieczeństwo wewnętrzne*, vol. 1, B. Wiśniewski (ed.), Warszawa 2017, p. 83.

⁷ J. Gilas, *Prawo międzynarodowe*, Toruń 1999, p. 170.

SYSTEMIC STATE BORDER PROTECTION SOLUTIONS

In Poland, the Interior Minister is responsible for protecting the state's land and sea borders and controlling border traffic⁸. Protecting the airspace of the Republic of Poland, on the other hand, is the responsibility of the Minister of National Defence.

A police formation – the Border Guard (BG), established by the Act of 12 October 1990 on the Border Guard⁹, was entrusted with the task of protecting the Polish border and organising and carrying out border traffic inspections.

The Border Guard is a cohesive, uniformed and armed formation tasked with protecting the state border¹⁰ on land and sea, as well as controlling border traffic, constituting a special part of state administration.

The Border Guard is headed by the Chief Commandant of the Border Guard, who reports to the Interior Minister and is appointed and dismissed upon their request by the Prime Minister¹¹.

⁸ To protect the state border, a border road and a border zone is established. The border road is an area 15 metres wide from the border line or the banks of water borders or sea shores. The border zone encompasses all municipalities and communes adjacent to the state border. Although the border zone width is less than 15 km, communes and municipalities located partially or wholly within 15 km from the state border are also considered part of the border zone.

⁹ Journal of Laws of 1990 as amended. The Border Guard began operating on 16 May 1991. The formation replaced the Border Protection Army, and is the successor of the Border Protection Corps and Border Guard – now-dissolved formations which protected the border during the interwar period.

¹⁰ The state border, pursuant to the Act of 12 October 1990 on the protection of the state border (Journal of Laws no. 78 item 461 as amended) is a vertical space along the border line which separates the territory of Poland from the territories of other states and high seas. The state border also separates airspace, water and subterranean areas. The state border is established:

- in land areas and places where the state border crosses standing or flowing bodies of water, if the border reaches the other bank – along a straight line from one sign to the other;
- on rivers, streams, creeks and non-navigable channels – along the middle of the stream bed;
- on navigable rivers – along the middle of the main fairway or along the middle of the main current.
- at sea, it is established at 12 nautical miles from the baseline or the external boundaries of roadsteads constituting parts of a given territorial sea.

¹¹ It is the primary state administration organ with regard to protecting the state border and controlling border traffic, carrying out its tasks with help of its subordinate office

The Border Guard is financed by the state¹². The funds for this formation also include the income obtained by the State Treasury from the forfeiture of items acquired through criminal activity detected by the Border Guard¹³ – these funds are used to improve the functioning of the Border Guard and serve as bonuses for members who directly contribute to uncovering such crimes. The formation is also co-financed by the European Union. These funds are primarily used to improve the infrastructure on the external border of the European Union (new BG posts, new border checkpoints) and equip the Border Guard with modern tools used to protect the border.

The Border Guard consists of Border Guard units (including naval), Border Guard posts and reserve detachments. Unit and post commanders perform their tasks with help of their subordinate offices. The BG operates three training facilities: the Central Training Facility in Koszalin and the Training Centre in Kętrzyn, as well as the Specialised Training Centre in Lubań.

The law also stipulates that the Border Guard is responsible for issuing permits for those who would like to cross the national border, including visas, as well as identifying, detecting and preventing crimes and offences and pursuing their perpetrators within the scope of the rights granted to the Border guard.

Equally important is ensuring the safety of international transport and public order in the vicinity of border crossings, carried out within the scope of the rights of the Border Guard and also in areas adjacent to borders¹⁴.

In addition, the Border Guard is responsible for preventing unauthorised cross-border transporting of waste, harmful chemicals, nuclear and radioactive materials, as well as preventing the pollution of water borders

– the General Headquarters of the Border Guard.

¹² See Art. 8 of the Act on the Border Guard (op. cit.).

¹³ Ibidem, Art. 11a.

¹⁴ The border zone, pursuant to the Act of 12 October 1990 on the protection of the state border (Journal of Laws no. 78 item 461) encompasses the area of entire communes and municipalities adjacent to the state border or, in coastal areas, adjacent to the coast. If the width of the border zone is less than 15 km as a result, communes and municipalities bordering those adjacent to the state border or coast are also included in the border zone.

and unauthorised transportation of drugs and psychotropic substances, as well as weapons, ammunition and explosives.

It is important to note that,

in the regional (provincial) dimension, certain tasks related to protecting the state border are carried out by the provincial governor, who is the organ responsible for coordinating the actions of all central and local authorities operating in a given province related to e.g. state security and upholding public order. The Act on state border protection requires that the governor (provided that it directly follows from the needs related to protecting the state border or controlling border traffic) prohibit the use of certain parts of the border road. As regards border security, governors are also required to maintain border infrastructure, including ensuring that border checkpoints are in a state which renders it possible to carry out inspections efficiently and effectively [...] ¹⁵. It follows from the above that it is the domain of provincial governors to set forth provisions relating to the availability of the border road, and to maintain border crossing infrastructure to ensure their effective functioning ¹⁶.

In justified cases prescribed by law, the Border Guard may: close or limit the cross-border flow of individuals or goods through border checkpoints, implement special rules governing the issuing of documents enabling Polish citizens to cross the border, implement special rules governing the issuing of documents enabling foreigners to cross the border and stay on the territory of the Republic of Poland ¹⁷. The aforementioned limitations are implemented by the Interior Minister in consultation with the Minister of Foreign Affairs and the Minister of National Defence, ensuring that the level of individual and social inconvenience resulting from these limitations is minimal.

The Border guard is also authorised to issue visas and other permits to cross the state border, pursuant to the Act on foreign nationals. A temporary stay visa may be issued by a commander to a foreigner who proves

¹⁵ Art. 9 and Art. 17 of the Act of 12 October 1990 on state border protection (Journal of Laws no. 78, item 461 as amended).

¹⁶ P. Lubiewski, A. Babiński, *Współpraca transgraniczna...*, op. cit., p. 88.

¹⁷ See Art. 28 section 1 of the Act of 29 August 2002 on martial law and the competences of the Commander in Chief and the principles of reporting to the constitutional organs of the Republic of Poland (Journal of Laws no. 156 item 1101).

that there are unique and urgent causes, in particular of humanitarian or professional nature or those related to a vital interest of the Republic of Poland, which require that the person in question enters and stays on the territory of Poland for the purpose of visiting, participating in sporting events, cultural activities or international conferences, performing official tasks (in the case of representatives of another state's organs or an international organisation).

The Border Guard may also inspect identity documents or identify individuals using other methods, apprehend individuals as prescribed by the code of criminal procedure and other relevant acts, and bring them before the relevant Border Guard body.

From the point of view of this discussion, the following rights of the Border Guard are of equal importance: searching individuals, objects, rooms and means of transportation as prescribed by the code of criminal procedure and other relevant acts, observation and recording using image and sound capture technology of events occurring on roads and in other public spaces, stopping vehicles and performing other actions related to road traffic control.

The border guard has the right to stop at the border and return to the sender harmful nuclear and radioactive materials, chemicals, biological materials and waste.

For detection and identification purposes, the Border Guard may collect, store and use fingerprints, photographs and personal data, including those containing the ethnic background and religious affiliation, as well as data related to health of persons suspected of committing crimes prosecuted by public prosecution and persons of unknown identity or attempting to conceal their identity, without the consent and knowledge of the data subject.

In the course of performing their duties, BG officers may request help from state institutions, government administration organs and local authorities, as well as public utility business entities. The aforementioned institutions, organs and entities are required to offer help related to their activities as prescribed by law. The BG may also request help from other business entities and social organisations. In urgent cases, the BG may request immediate help from any individual as prescribed by law.

An analysis and assessment of the operating procedures of the Border Guard¹⁸ mentioned above leads to the conclusion that they are both coherent and flexible.

Relevant provisions of law grant the Border Guard, including officers stationed at border checkpoints, a wide range of rights enabling the BG to carry out its prescribed tasks, thus fulfilling its primary function – law enforcement.

Road, railway, air, sea and river border crossings and the types of permitted traffic are specified by international agreements. Sea and air crossings are specified by way of regulations of the Council of Ministers.

The aforementioned crossings are closely related to the current conditions in which the state border protection and traffic control tasks prescribed by law are carried out.

Border crime rates are what primarily determines how state border protection and border traffic are organised. Major threats related to border crime include¹⁹:

- illegal transit migration,
- rising migration with intention to stay,
- forging of documents entitling to crossing the border,
- smuggling of excise goods (primarily alcohol and cigarettes), drugs, weapons, explosives, ammunition, products infringing upon copyright and related rights, organised trafficking of stolen automobiles and bringing cars into the customs territory of a country without paying the required customs duties and taxes,
- increasing levels of organised human and goods trafficking, flexibility of organised crime groups with regard to creating new trafficking channels, methods and means of action, as well as their international and cross-border nature.

Combating border crime is an extremely important activity in the area of security and counteracting crime. Border crime should be counteracted on three levels in the form of²⁰:

¹⁸ Cf. B. Wiśniewski, T. Wojtuszek, J. Prońko, *Wybrane aspekty organizacji działań formacji resortu spraw wewnętrznych i administracji w sytuacjach kryzysowych*, „Biuletyn. Centralny Ośrodek Szkolenia Straży Granicznej” 1/2004, p. 61.

¹⁹ J. Prońko, *Przestępczość graniczna* [article manuscript].

²⁰ Ibidem.

- control efforts at the state border, primarily aimed at detecting petty crimes committed by individuals of small groups acting separately from the rest of the criminal underworld;
- operational efforts aimed at combating organised crime up to the level of regional or state coordinator, the primary aim of these efforts being to render it easier for border services to detect larger contraband shipments and organised human trafficking operations. Such actions must be closely coordinated with both domestic and foreign services combating organised crime;
- strategic efforts aimed at uncovering and destroying the sources of revenue of organised crime groups operating internationally.

Every human activity, including criminal, develops more effectively the more tolerated it is in society, which is a function of the mentality of a given society and its habits, and which is further influenced by its socio-economic and political conditions. Thus, it is important to remember about long-term education programmes aimed at eliminating this social tolerance. In the area of domestic and foreign policy, sustainable development of all regions should be pursued and excessive disproportions between them should be eliminated²¹. Only effective actions in all three of the aforementioned areas of state and Border Guard activity can bring the expected results, that is lower crime rates. However, it is important to remember that results can only be obtained after a significant amount of time. Immediate effects can only be obtained in the area of control and operational activities. It is beyond all doubt that low border crime rates and an effective border control system are conducive to pursuing all endeavours related to integration processes in local communities, the security of human collectives and economic development. Thus, it is imperative to develop long-term programmes which would render it possible to properly harmonise the efforts of multiple state services and institutions with the corresponding institutions from other countries and international organisations, which would enable the Border Guard to perform the coordinating function in all areas related to combating border crime²². In addition, offering the relevant authorities and partnered institutions (including local authorities) solutions supporting the actions of all organisa-

²¹ Ibidem.

²² Ibidem.

tional structures of the aforementioned formation creates the conditions enabling it to perform the innovative function.

Depending on the nature of the task at hand, three levels of control can be listed, one for every area of Border Guard activity²³:

- 3rd level of control (basic intervention level) – control on this level involves managing forces currently on duty, supervised by the unit's operations duty officer, and encompasses actions taken by border checkpoint personnel in the area they are responsible for;
- 2nd level of control – the tactical level, its purpose being to coordinate the activities of intervention forces and their reinforcements available to a given organisational entity. Activities on the 2nd level are performed up to the Border Guard unit command level;
- 1st level of control – the strategic level, understood to refer to commanding forces and coordinating and controlling activities related to events whose scope exceeds the area of a single Border Guard organisational unit (or if there is a risk of such a threat emerging), as well as during prolonged operations, in conditions which require reinforcements, additional materiel, and more logistics support. Such large-scale Border Guard operations are carried out by a particular Border Guard unit command or by the Border Guard Headquarters.

FUNCTIONS OF BORDER CHECKPOINTS AND THE BORDER GUARD

Border checkpoints are understood as locations open to border traffic where it is permissible to cross the state border based on proper documentation. The relevant literature lists several types of border checkpoints, i.e. road, railway, air, sea and river.

The functions of border checkpoints can be analysed from the point of view of the functions of the state, the Border guard (a formation which constitutes part of non-combined public administration) and central and local authorities.

In relation to the duties of the state, border checkpoints perform the following functions:

²³ For more information, see: B. Wiśniewski, B. Bocianowski, M. Błażejowski, *Straż Graniczna w sytuacjach kryzysowych*, Warszawa 2005.

- law enforcement²⁴ – in particular related to: protecting the state border and controlling border traffic, ensuring security and upholding the public order in border areas. The law enforcement function of border checkpoints should be analysed together with how border protection and traffic control are organised, both of which are primary tasks of every state and which directly impact the internal and external security. After all, it is commonly accepted that “a well-protected border is perceived by society as proof of the state’s strength and effectiveness, and as an expression of the security of its citizens”²⁵;
- preventive – related to preventing border threats via activities of state entities carried out at border checkpoints and their immediate vicinity. Cooperation between all institutions participating in ensuring border security is inextricably bound with prevention, whose integral part is education tailored to meet the related needs;
- educational – related to teaching about security and instilling proper attitudes in citizens, including a national and communal identity. The nature of the Border Guard, as well as all of its teaching and law enforcement efforts enable the BG to perform the educational function;
- representative – individuals crossing the state border meet with officers whose uniforms are a symbol of state affiliation, as well as encountering the laws binding on the territory of Poland and the European Union, which renders it possible to identify one’s own national and Union identity.

In addition, the aforementioned functions of border checkpoints can be analysed from the agentive and object-oriented points of view. The object-oriented approach relates to analysing the functions of checkpoints as places where the border is crossed. The agentive approach relates to analysing the functions of border checkpoints from the point of view of Border Guard officers on duty at these checkpoints.

It appears that the functions of border checkpoints can also be analysed, despite their limited area of responsibility, in micro and macro scale. These scales relate to the state (as a political organisation) and the administered area (including particular checkpoints), respectively.

²⁴ For more information, see: H. Izdebski, M. Kulesza, *Administracja publiczna. Zagadnienia ogólne*, 2nd ed., Warszawa 1999, pp. 85–89.

²⁵ S. Ziółkowski, *W ochronie granicy państwowej*, „Polska Zbrojna” 12.06.1995, p. 6.

The tasks of the Border Guard, as part of non-combined public administration, determine the following functions of border checkpoints:

- initiating – offering the relevant supervising authorities and partnered institutions (including local authorities) solutions related to the functioning of border checkpoints, as well as solutions facilitating border traffic and the protection of state border;
- coordinating – activities aimed at arranging joint efforts related to: the functioning of border checkpoints, state border protection and border traffic control (including as part of rights related to cooperating with national institutions and their equivalents from neighbouring countries);
- informative – resulting from the access of the institution and citizens to information stores;
- supportive – related to all actions aimed at supporting other services and local authorities as prescribed by law and local by-laws and exceeding the scope of duties of the Border Guard.

The primary manifestations of the aforementioned functions are: organising state border protection, the purpose, tasks and organisational structure of the Border Guard, the organisation of the formation's actions, border crime rates, domestic and international partnerships, as well as the legal bases regulating the above matters. The proposed typology of the functions of border crossings is undoubtedly not the only one of its kind.

CONCLUSIONS

To summarise, it is important to note that the border protection and traffic control system in Poland and the European Union is conducive to all initiatives launched by particular regions of neighbouring countries, which assume the form of institutionalised cross-border cooperation. However, it is important to remember the importance of the special administration function, whose relationship with local administration is only made possible via joint efforts which are not proscribed by law. This is also the main area of activity of both the Border Guard, local authorities and particular border checkpoints.

The dynamic, and thus chaotic,

level of threat to the state border and [...] the level of border traffic control require interdisciplinary actions. The involvement of multiple entities, frequently seemingly unrelated to the Border Guard with

regard to their jurisdiction, in preventive actions and investments in areas related to state border protection and traffic control is proof of the interdisciplinary nature of these issues²⁶.

The above relates to the macro functions performed by the Border Guard and the micro functions of border checkpoints.

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²⁶ B. Wiśniewski, Z. Piątek, *Zakończenie*, In: *Współczesny wymiar...*, op. cit., p. 134.

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PROF. BERNARD WIŚNIEWSKI – member of the Faculty of Security and Law at the Police Academy in Szczytno. Professor Wiśniewski studies internal security, defensive preparation, crisis management and security education. He is the author and co-author of more than two hundred publications both in Poland and abroad. He is also a former public administration official.

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