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# THE ROLE OF THE BORDER GUARD IN ENSURING NATIONAL SECURITY

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#### **ABSTRACT**

**Background:** Border protection is an extremely important area in ensuring the national security of each country. **Objectives:** The purpose of this article is to show the role of the Polish Border Guard in the area of Poland's national security. The Border Guard in Poland is responsible for ensuring state security and responding to emerging threats using available methods and tools. **Methods:** To identify the role of the Border Guard in maintaining state security, an analysis of the literature on the subject was made. **Results:** The role of the Border Guard in ensuring state security is extremely important. **Conclusions:** Today, security issues have become very important both from the point of view of the individual and the country.

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#### Introduction

The term *security* comes from Latin from the word *securitas*, derived from *sine cura* – 'without custody'.<sup>2</sup> According to the Polish Language Dictionary, security is "a state of harmlessness, peace and certainty".<sup>3</sup> The subject that experiences it is aware that in the face of threats or symptoms of their occurrence, the state of affairs in which they are allows them to feel safe.<sup>4</sup>

Security may appear in the form of: personal security, public security, national security, universal security, energy security, etc. Today, security means a guarantee of society's development, and it is responsible for its survival. It is an impermanent condition that should be taken care of, which gives a sense of certainty, and guarantees behavioral and development-related opportunities.<sup>5</sup>

The term *state security* refers to individual states, i.e. sovereign political organizations, including their societies and nations. It is identified with the ability of the authorities and the nation to protect its internal values.<sup>6</sup>

State policy should be conducted in such a way as to ensure the safety of every citizen. It should also ensure order in the country, but also create appropriate conditions for civilization and economic development. The goal of security policy is also the protection of national heritage and the implementation of related obligations.<sup>7</sup>

Identification of threats and knowledge of them become, therefore, a basic condition for the initiation of preventive actions and the organization of defense. A threat to the security of the state is a situation in which the

<sup>&</sup>lt;sup>2</sup> R. Zięba, Kategoria bezpieczeństwa w nauce o stosunkach międzynarodowych, [in:] Bezpieczeństwo narodowe i międzynarodowe u schytku XX wieku, D.B. Bobrov, E. Haliżak, R. Zięba (eds), Warszawa 1997, p. 3; Stownik języka polskiego, Warszawa 1978, p. 147.

<sup>&</sup>lt;sup>3</sup> Słownik języka polskiego, op. cit., p. 147.

<sup>&</sup>lt;sup>4</sup> J. Delumeau, Skrzydła anioła. Poczucie bezpieczeństwa w duchowości człowieka Zachodu |w dawnych czasach, Warszawa 1998, pp. 9–20.

<sup>&</sup>lt;sup>5</sup> Słownik terminów z zakresu bezpieczeństwa narodowego, Warszawa 2002, p. 13.

<sup>&</sup>lt;sup>6</sup> Bezpieczeństwo państwa. Wybrane problemy, K.A. Wojtaszczyk, A. Materska-Sosnowska (eds), Warszawa 2009, p. 18.

<sup>&</sup>lt;sup>7</sup> W. Fehler, Bezpieczeństwo wewnętrzne współczesnej Polski, Warszawa 2012, p. 23.

state cannot pursue its national interest, or these possibilities are significantly limited and disrupted.

# BORDER GUARD IN POLAND

The existence of state borders is primarily motivated by the fact that each state is assigned a certain territory, as well as by the territorial instinct proper to human communities. This instinct of territoriality of the community consists in striving to ensure exclusive control over events and processes occurring in the area in which the community lives.<sup>8</sup> The main border of the state is to determine the geographical location of the territory, but it not only determines the area of the state; it also performs certain functions, which in the basic dimension are internal and external.<sup>9</sup>

The internal dimension of the state border is determined primarily by the spatial extent of the territorial sovereignty of power. Therefore, it includes regulation and freedom of action, which is undertaken by various groups functioning within the state. This also applies to migration as well as financial and material transfers, and to the flow of information outside the state's territorial borders. It can be stated that, in this dimension, the border defines the space within which the state performs its functions resulting from its power. The external dimension of the border, on the other hand, refers to the limitation of access to the state by all entities operating outside its territory.<sup>10</sup>

The Border Guard in Poland was established on 15 May 1991, when the formation of the Border Protection Forces ended. Pursuant to *Act of 12 October 1990 of the Border Guard*, the Border Guard was entrusted with the protection of the state border on land and sea, and with control of border

<sup>&</sup>lt;sup>8</sup> A. Jagielski, Pogranicze polsko-czeskie jako problem badawczy, [in:] Strefa pograniczna Polska – Czechy. Procesy transformacji i rozwoju, K. Heffner, W. Drobek (eds), Opole 1995, p. 49.

<sup>&</sup>lt;sup>9</sup> G. Balawajder, Granica polsko-czeska w kontekście integracji europejskiej. Różne aspekty ewolucji funkcji granicy, [in:] Śląsk Opawski i Opolski w kierunku standardów europejskich, B. Kozera, M. Lis (eds), Opole 2003, p. 229.

K. Heffner, Granica – rozwój instytucji (definicje, etymologia, typologia), [in:] Ewolucja instytucji granicy we współczesnej Europie, S.M. Grochalski (ed.), Opole 2010, p. 77.

traffic. Protection of the state border is undoubtedly one of the basic tasks in ensuring national security. 11

The state border must be secured by appropriate services; it results from Article 5 of the Polish Constitution: "To protect the state border on land and sea, border control creates a uniformed formation – the Border Guard". <sup>12</sup>

The security of the state border requires that the authorities take measures that ensure the border's full technical and physical protection, as well as the proper administration of its marking and effective control of border traffic. According to PWN Great Encyclopedia, the border of a state is a vertical surface that passes through a boundary line drawn on the surface of the earth, separating the territory of one country from other countries, or from no man's areas.<sup>13</sup>

In broad terms, the protection of the state border includes:

- political, economic, ecological, sanitary, veterinary and phytosanitary protection,
- protection against criminal phenomena,
- protection against phenomena violating public order. 14

The entity directly responsible for border protection in Poland is the Border Guard. The legal bases for the organization and functioning of the Border Guard are regulated by:

- 1. Act of 12 October 1990 of the Border Guard (Journal of Laws no. 78, item 462 as amended),
- 2. Ordinance of the Minister of the Interior of 9 May 1992 on how to perform personal checks, as well as view the contents of luggage, check cargo in ports and stations and in means of communication by Border Guard officers (Journal of Laws no. 44, item 197),
- 3. Regulation of the Council of Ministers of 17 February 1998 on the conditions and manner of use of direct coercion measures and the use of firearms by Border Guard officers as well as the conditions and method of use of direct coercion

<sup>&</sup>lt;sup>11</sup> A. Pyrkosz, D. Tokarczyk, *Pierwsze formacje graniczne Polski niepodległej*, "Biuletyn Centralnego Ośrodka Szkolenia Straży Granicznej", 2008, no. 2, p. 12.

<sup>&</sup>lt;sup>12</sup> M. Zdyb, J. Stelmasiak, K. Sikora, System bezpieczeństwa i porządku publicznego. Organy i inne podmioty administracji, Warszawa 2015, p. 132.

<sup>&</sup>lt;sup>13</sup> Wielka Encyklopedia Powszechna, Warszawa 1995, p. 13.

<sup>&</sup>lt;sup>14</sup> M. Lisiecki, Zarządzanie bezpieczeństwem Publicznym, Warszawa 2012, p. 32.

- measures, as well as the rules for the use of firearms by the Border Guard's detachments (Journal of Laws no. 27, item 153),
- 4. Regulation of the Prime Minister of 30 July 1999 on the scope, conditions and procedure for providing information to the Border Guard about a person obtained by the Police and the Office of State Protection during operational and reconnaissance activities (Journal of Laws no. 65, item 740).<sup>15</sup>

The political transformation in Poland in 1989 caused that the geopolitical location of Poland and its position in Europe changed. These changes caused a situation in which many new and more complicated tasks were set before the Border Services. With the opening of Polish borders, there was an increase in the threat to order and security within and at the border, and new types of border crime appeared, as well as new forms of organized crime constituting the most severe danger for the country.<sup>16</sup>

The analysis of the functioning of the Border Guard carried out by Serdakowski allowed to draw the conclusion that the level of cross-border security is directly proportional to the level of quality of the Border Guard's cooperation with other services ensuring national security, and to the level of the effectiveness of the actions taken. In addition, attention was paid to the number of Border Guard officers, which is insufficient. It is believed that a larger number of officers at the borders and within the territory of the state, especially in large urban agglomerations, would bring tangible benefits in the number of detentions of irregular migrants.<sup>17</sup>

The Border Guard Act has designated the following competences for the Border Guard in Poland:

- protecting the state border, i.e. securing the border both on land and at sea;
- recognizing, preventing and detecting crimes and offenses, as well as
  prosecuting their perpetrators; this applies to tax crimes, as well as crimes
  and offenses related to crossing the state border. "In the event of a crime

<sup>&</sup>lt;sup>15</sup> Organy i korporacje ochrony prawa, S. Sagan (ed.), Warszawa 2001, p. 165.

A. Warmiński, Administracja bezpieczeństwa porządku publicznego w Polsce, Warszawa 2013, p. 267.

<sup>&</sup>lt;sup>17</sup> J. Serdakowski, *Perspektywy rozwoju bezpieczeństwa transgranicznego RP*, "Rozprawy Społeczne", 2015, no. 2, p. 33.

- or offense being identified, the Border Guard performs certain activities to document evidence of these acts" 18;
- ensuring public order in the area of border crossings and in the border area. Ensuring order is to guarantee safe crossing of the state border without interference and in accordance with established rules. The point is that all persons crossing the border are obliged to behave in accordance with applicable regulations, and in the event of improper behavior, Border Guard officers are required to intervene to restore order. The obligation to guarantee public order when crossing the border also extends to the border lane and to a limited extent in the border area<sup>19</sup>;
- ensuring public order and security of international communication within the territorial range of the border crossing: the Border Guard carries out security checks in the territorial range of the border crossing and in means of transport (international communication), and carries out activities aimed at identifying and preventing terrorist threats<sup>20</sup>;
- embedding and maintaining border markers on land, as well as preparing, updating and storing border geodetic and cartographic documentation: one of the duties of the Border Guard is to ensure that border markers are current, durable and updated periodically. In addition, the Border Guard keeps geodetic and cartographic documentation regarding the border;
- implementing the provisions of international agreements on legal relations on the state border. "These provisions result in competences of the neighboring border protection authorities in accordance with the principles set out in the contract"<sup>21</sup>;
- supervision over the exploitation of Polish maritime areas and over the compliance by ships with the regulations in force in those areas. Polish Border Guard vessels depart into the territorial waters of Poland so as to control the ships there, check their entitlements to the activities they carry out (permits), as well as detect pollution of the marine environment and their perpetrators<sup>22</sup>;

<sup>&</sup>lt;sup>18</sup> A. Warmiński, *Administracja..., op. cit.*, p. 268.

<sup>&</sup>lt;sup>19</sup> Organy i korporacje..., op. cit., p. 166.

<sup>&</sup>lt;sup>20</sup> A. Warmiński, *op. cit.*, p. 168.

<sup>&</sup>lt;sup>21</sup> Organy i korporacje..., op. cit., p. 166.

<sup>&</sup>lt;sup>22</sup> *Ibidem*, p. 167.

- protection of the state border in the airspace of the Republic of Poland,
   i.e. constant monitoring of aircraft and flying objects that cross the state
   border at low altitudes, and informing about these flights the relevant
   units of the Polish Air Force;
- "preventing the transport of waste, harmful chemical substances, and nuclear and radioactive materials; as well as preventing the pollution of border waters; across the national border without permission"<sup>23</sup>;
- preventing the smuggling of drugs and psychotropic substances across the state border: the Border Guard has an obligation to prevent cross-border transfers of drugs and psychotropic substances;
- cooperation in the field of border protection with the border protection authorities of other countries, as well as cooperation with state administration bodies, local government and other units of their country.<sup>24</sup>

The basic and most important legal act regulating the functioning of the Border Guard in Poland is the *Act of 12 October 1990 of the Border Guard*.<sup>25</sup> In the further period of time subsequent ordinances were issued on its basis. However, the *Act on the protection of the state border* is also important in determining the tasks, and forms and methods of operation of the Border Guard.<sup>26</sup>

The provisions of the *Code of Criminal Procedure*<sup>27</sup>, the *Fiscal Penal Code*<sup>28</sup>, as well as the *Code of Conduct in cases of misdemeanors*<sup>29</sup> shall apply to the Border Guard and its officers, as bodies or participants of criminal, fiscal penal, or offense proceedings. The Border Guard and its functioning are also regulated by normative acts which are internal in nature and are established by the Chief Commander of the Border Guard. The Chief of

<sup>&</sup>lt;sup>23</sup> A. Warmiński, *op. cit.*, p. 269.

<sup>&</sup>lt;sup>24</sup> Organy i korporacje..., op. cit., p. 167.

<sup>&</sup>lt;sup>25</sup> Ustawa z dnia 12 października 1990 r. o Straży Granicznej, uniform text, Journal of Laws 2011 no. 116, item 675, as amended.

Ustawa z dnia 12 października 1990 r. o ochronie granicy państwowej, Journal of Laws 1990 no. 78, item 461, as amended.

<sup>&</sup>lt;sup>27</sup> Ustawa z dnia 6 czerwca 1997 r. Kodeks postępowania karnego, Journal of Laws 1997 no. 89, item 555, as amended.

<sup>&</sup>lt;sup>28</sup> Ustawa z dnia 10 września 1999 r. Kodeks karny skarbowy, uniform text, Journal of Laws 2013, item 186.

<sup>&</sup>lt;sup>29</sup> Ustawa z dnia 24 sierpnia 2001 r. Kodeks postępowania w sprawach o wykroczenia, uniform text, Journal of Laws 2013, item 395.

Border Guard mainly prepares organizational regulations for the commands of Border Guard branches and for the organizational units of the Border Guard Headquarters.

### NATIONAL SECURITY AND THE TASKS OF THE BORDER GUARD

The Border Guard has to perform a number of tasks resulting mainly from legal acts that regulate its functioning. And so, in the *Act of 12 October 1990 of the Border Guard*, tasks related to the protection of the Polish border are as follows:

- "protecting the state border,
- organizing and carrying out border traffic control,
- preventing illegal migration,
- issuing permits to cross the state border, including visas,
- recognizing, preventing and detecting crimes and offenses, and prosecuting their perpetrators within the competence of the Border Guard,
- ensuring security of international communication and public order within the territorial range of the border crossing, and, within the scope of the Border Guard's competence, also in the border zone,
- protection of the state border in the airspace of the Republic of Poland by observing aircraft and flying objects flying over the state border at low altitudes and informing the appropriate units of the Polish Air Force of these flights".<sup>30</sup>

The Border Guard Act lists a number of tasks that are carried out by the Border Guard. Official practice divides this task into two main functional planes: border traffic control and protection of the "green border"<sup>31</sup>.

In addition to operational and reconnaissance activities, the Border Guard may also perform special actions. They were specified in *Ordinance* no. 35 of the Chief Commander of the Border Guard.<sup>32</sup> Pursuant to this ordinance, special actions consist of:

<sup>&</sup>lt;sup>30</sup> L. Elak, Ochrona granicy państwowej, Warszawa 2017, p. 110.

<sup>&</sup>lt;sup>31</sup> A. Chomacki, *Straż Graniczna jako element systemu bezpieczeństwa państwa*, "Obronność", 2012, no. 3, p. 24.

<sup>&</sup>lt;sup>32</sup> Zarządzenie nr 35 Komendanta Głównego Straży Granicznej z dnia 4 marca 2014 r. w sprawie wykonywania działań specjalnych przez funkcjonariuszy Straży Granicznej, Dz. Urz. KGSG [Official Journal of Border Guard Headquarters] 2014, item 52.

- 1. "ensuring security during the detention of persons in the manner and cases specified in the provisions of the *Code of Criminal Procedure* and other acts, in the event of a justified suspicion that they possess weapons, ammunition or explosives;
- 2. ensuring security during the implementation of tasks related to direct threat to human life or health, as well as to property of significant value;
- 3. participation in undertakings aimed at counteracting terrorist threats;
- 4. securing in terms of security of operational and investigative activities as well as activities related to the control of legality of stay or employment of foreigners on the territory of the Republic of Poland;
- 5. securing state ceremonies and undertakings of national importance and international protection of people from the VIP category, as well as persons covered by a special level of security at the request of authorized entities;
- 6. participation in the implementation of projects aimed at preventing unlawful attacks on the Border Guard facilities and facilities serving the defense of the state, protecting the state border, or important for the national economy;
- 7. implementation of other activities requiring skills, or specialist knowledge of the officers.

In view of the multitude of tasks imposed on the Border Guard, they may use information held by other state authorities, which also have competence to maintain security in the country. It should also be noted that the growing number of tasks imposed on officers of the Border Guard causes the need to adjust the number of officers to the possibilities of effective implementation of these tasks.

Nowadays, the abolition of border control of persons at the internal borders of countries operating within the European Union requires the extension of the scope of control at the EU's external borders. At the same time, the Border Guard has been granted much greater competences within the country, which primarily concerned combating cross-border crime.

The basic principles of the organization of the Border Guard include:

 the principle of uniformity of the Border Guard – it means that all its internal organs should cooperate with one another based on organizational ties of superiority and subordination;

- the principle of hierarchical subordination of a lower-level body to a higher-level body;
- the principle of efficient operation, which stipulates that officers of the Border Guard should act in accordance with the rules of praxeology, i.e. quickly, efficiently and effectively;
- the principle of professionalism, which is the result of the principle of efficient operation, and is expressed in the internal division of tasks between individual organizational units of the Border Guard.

However, one cannot ignore the fact that to ensure the internal security of the country, the key legal act is the Polish Constitution, which states: "The Republic of Poland protects the independence and inviolability of its territory, ensures human and citizen freedoms and rights, as well as the security of national heritage and ensures environmental protection in accordance with the principle of sustainable development" (Article 5).

Maintaining stability in the country becomes a guarantee of a sense of security for citizens. As mentioned earlier, psychologists assume that the sense of security is one of the basic needs in the hierarchy of human needs, because it "belongs to the group of higher, existential, and therefore basic needs, and it:

- conditions the body's balance,
- prevents the sensation of internal conflict,
- promotes proper personal, intellectual, mental and physical development,
- enables a sense of belonging, stability, peace and trust".33

It is worth noting that Border Guard officers are systematically improving their competences by participating in various trainings and projects. It is worth mentioning here two of them: TWIERDZA-18 and GATE-18. Recommendations resulting from the conclusions and observations made during these projects point to the low level of knowledge of "legal issues regarding the principles of cooperation of the Polish Armed Forces with the Border Guard in hybrid conditions and in crisis conditions – including, in particular, service subordination and principles of military operation based on the legal provisions on the Border Guard (rights for the army under the *Act on the Border Guard* and restrictions under Article 45 of the *Act on direct coercion measures and firearms*). In addition, the developed command and communication procedures do not sufficiently allow the Border Guard

<sup>&</sup>lt;sup>33</sup> K. Janus, *Pedagogika i psychologia*, Warszawa 2006, p. 128.

to cooperate with the Armed Forces. The problem of mass influx of and crossing of the border by refugees was treated marginally – including the support by the army of Border Guard's actions aimed at channeling refugees to collective areas, their supervision as well as segregation and elimination of sabotage elements among them".<sup>34</sup>

The organization of the operation of the Border Guard services primarily serves to protect Polish borders, and thus contributes directly to raising the level of state security. Proper fulfillment of tasks imposed on these services enables the implementation of security policy and promotes stability in the country. This is particularly important in the situation in the year 2020 related to the introduction of the epidemic emergency, when full restoration of borders guarded by border guards and the army occurred, and crossing the borders is only possible at designated crossings.

#### Conclusion

The implementation of tasks imposed on Border Guard officers significantly contributes to maintaining Poland's national security. Poland became a full member of the European Union on 1 May 2004. It was the first event that caused significant changes on the state border, because the borders with Lithuania, Slovakia, the Czech Republic, and Germany became internal borders, while the border with Ukraine, Belarus, and Russia became the external border of the Union. "Internal borders means the common land borders of the Member States, including rivers and lakes; internal airports; seaports; and river and lake ports for regular ferry connections. By contrast, external borders mean land borders, including those on rivers and lakes, and the borders of the Member States, as well as their airports, rivers, seas and lakes, provided that they do not constitute internal borders". 35 The current geopolitical situation implies the need for close cooperation between the Border Guard and border services of neighboring countries. It is a necessary condition for border protection and it is difficult to overestimate the importance of preventing and combating crime.

<sup>&</sup>lt;sup>34</sup> L. Elak, Bezpieczeństwo wschodniej granicy, Warszawa 2018, p. 202.

<sup>&</sup>lt;sup>35</sup> A. Warmiński, Administracja bezpieczeństwa porządku publicznego w Polsce, Warszawa 2013, p. 269.

After Poland's accession to the European Union, the structures had to be adapter and the organization of the Border Guard had to be adjusted to new conditions. Some watchtowers have been merged with border checkpoints and the branch structure was adapted to European standards. This reorganization also forced changes in infrastructure, in the use of equipment, and above all in improving the qualifications of officers.

Currently, officers serving in the formation of the Border Guard are required to perform many tasks related to state security. This particularly applies to the protection of Polish borders and border areas. In the year 2020, Poland finds itself in the SARS-CoV-2 epidemic threat, which means that it is up to the Border Guard to stop the spread of coronavirus and thus guarantee security, including health, for citizens.

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