



SUMMARY OF DOCTORAL DISSERTATION

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The subject of the dissertation is the issue of operational eavesdropping (with special focus on telecommunications lawful interception) in the context of compatibility of the provisions of laws regulating its application with the Constitution of the Republic of Poland and selected acts of international law. The main objective of the dissertation was to assess the current legal environment in terms of the guarantee of the right to privacy. The analysis was carried out primarily from the perspective of the constitutional standard of protection of human rights and freedoms, supplemented by international law aspect. The author also aimed to present the effect of the considerations in a practical perspective – resulting from his professional experience in field of telecommunications lawful interception.

Out of the scope of interest of this dissertation is the issue of collecting and sharing retention data, because it constitutes a broad issue, requiring separate treatment and in-depth research.

The work analyzed nine so called „competence acts” in force at the time of its completion, i.e. the Police Act¹ and similar provisions of the competence acts that regulate the functioning of other state bodies authorized to use lawful interception, i.e. ABW Act², CBA Act³, KAS Act⁴, SG Act⁵, SKW Act⁶, SOP Act⁷, u.s.f.n.⁸ (Interior Supervision Bureau), ŻW

¹ Act of 6 April 1990 Police, consolidated text: Journal of Laws of 2023, item 171, with subsequent amendments, hereinafter as the “Police Act”.

² Act of 24 May 2002 Interior Security Agency and Intelligence Agency, consolidated text: Journal of Laws of 2022, item. 557 with subsequent amendments; hereinafter as the „ABW Act”.

³ Act of June 2006 Central Anti-Corruption Bureau, consolidated text: Journal of Laws of 2022, item. 1900 with subsequent amendments; hereinafter as the „CBA Act”.

⁴ Act of 16 November 2016 National Tax Administration, consolidated text: Journal of Laws of 2022, item. 813 with subsequent amendments; hereinafter as the „KAS Act”.

Act⁹ and the Act on Anti-Terrorism Activities¹⁰.

The aim of the dissertation was to answer the following research problem: do the legal regulations of state authorities¹¹ regarding operational eavesdropping require changes from the point of view of constitutional standards in the field of individual's rights and freedoms?

In response to the above research problem, a research thesis was formulated that most of the provisions of competence acts, in principle, meet constitutional standards and reflect the essence of the constitutional regulation.

A fundamental importance for achieving the objective of the work had the use of the dogmatic-legal method, i.e. the analysis of the meaning of legal provisions, in order to assess them, primarily in terms of compatibility with Constitution of the Republic of Poland. This method also includes the analysis of the views of the doctrine as well as the jurisprudence of the European Court of Human Rights, the Court of Justice of the European Union, the Supreme Court, the Constitutional Tribunal and common courts. Within the dogmatic-legal method, linguistic analysis was also conducted.

Other research methods were also applied in the work as well. The historic-legal method was used to present a legal solutions from the past, e.g. the Polish constitutional tradition, or repealed provisions of competence acts (especially after the the judgment of the Constitutional Tribunal of 30 July 2014, K 23/11¹²), in order to trace their evolution. In addition, as a supportive one, the comparative-legal method was also used, which aims to compare the legal solutions adopted in Poland with the law in force in Federal Republic of Germany, in the field of certain aspects of operational eavesdropping (e.g. in terms of information obligation or the allowable length of eavesdropping).

The considerations that are the subject of this dissertation are contained in five chapters, preceded by Introduction and crowned with Summary containing a recapitulation of the conducted analyses.

⁵ Act of 12 October 1990 Border Guard, consolidated text: Journal of Laws of 2022, item. 1061 with subsequent amendments; hereinafter as the „SG Act”.

⁶ Act of June 2006 Military Counterintelligence Service and Military Intelligence Services, consolidated text: Journal of Laws of 2023, item 81 with subsequent amendments; hereinafter as the „SKW Act”.

⁷ Act of 8 December 2017 State Protection Service, consolidated text: Journal of Laws of 2023, item 66 with subsequent amendments; hereinafter as the „SOP Act”.

⁸ Act of 21 June 1996 Special Forms of Exercise of the Supervision by Minister competent for Interior Affairs, consolidated text: Journal of Laws of 2022, item 2487 with subsequent amendments; hereinafter as the „u.s.f.n.”.

⁹ Act of 24 August 2001 Military Police and Military Order Bodies, consolidated text: Journal of Laws of 2021, item 1214 with subsequent amendments; hereinafter as the „ŻW Act”.

¹⁰ Act of 10 June 2016 Anti-Terrorism Activities, consolidated text: Journal of Laws of 2022, item 2632 with subsequent amendments.

¹¹ ABW Act, CBA Act, KAS Act, Police Act, SG Act, SKW Act, SOP Act, u.s.f.n. and ŻW Act.

¹² Constitutional Tribunal Judgement of 30 July 2014, K 23/11, OTK-A 2014, No. 7, item. 180.

Chapter I entitled "Protection of the right to respect for private life in the Constitution of the Republic of Poland and international law" presents fundamental issues from the point of view of examining the constitutionality of regulations, i.e. constitutional and treaty regulations¹³ as well as Polish historical constitutions. Subsequently, the primary patterns of control most often referred to when examining the constitutionality of regulations relating to operational lawful interception were presented, i.e. Article 47, 49 and 51 of the Constitution, of the Republic of Poland. An immensely important issue related to the assessment of the constitutionality of regulations was also presented, i.e. a limitation clause for constitutional rights and freedoms, set out in Article 31(3) of the Constitution of the Republic of Poland (proportionality principle), which provides a guideline for the limits and principles of limiting the right to privacy in the application of regulations regarding lawful interception. As a supplement to the whole picture of protection, but also limitations to the right to privacy, secondary legislation was presented, e.g. GDPR and Directive 2002/58/EC.

Chapter II entitled "Types of eavesdropping" presents general issues related to eavesdropping, starting with the introduction of broadly understood operational and reconnaissance activities. In the further part of the chapter, a substantive matters related to operational lawful interception, as one of the types of operational control were presented. The purpose of this part of dissertation was also to analyze the statistics on the use of operational lawful interception which allowed to draw conclusions important from the perspective of the protection of constitutional rights and freedoms. The next issue raised was the technical methods of conducting operational lawful interception, where three methods of eavesdropping, including the Pegasus system, were characterized and evaluated from the perspective of guarantees for constitutional rights and freedoms. In the next section, the criminal trial lawful interception was synthetically presented, where the differences and mutual relations with operational lawful interception were indicated. In the following part, the problematic matter of the use of operational lawful interception in the course of criminal proceedings was presented. The chapter ends with a section devoted to the obligations of telecommunications entrepreneurs related to ensuring the realization of operational lawful interception, in

¹³ International Covenant on Civil and Political Rights Adopted by General Assembly of the United Nations on 19 December 1966, Journal of Laws of 1977 No. 38, Item. 169; Charter of Fundamental Rights of the European Union, OJ EU C. 2007, No 303 with subsequent amendments; Convention for the Protection of Human Rights and Fundamental Freedoms, Drawn up in Rome on 4 November 1950, Changed by Protocols No. 3, 5 and 8 and Supplemented by Protocol No. 2, Journal of Laws of 1993. No. 61, Item. 284.

accordance with the Telecommunications Law¹⁴. The government's draft law - Electronic Communications Law was also introduced.

The next two, the most extensive, chapters, i.e. No. III entitled "Special services" and No. IV entitled "Police services" constitute the core of the dissertation and the field of key analyses from the point of view of the purpose of the work and the thesis posed. Chapter III analyzes the provisions of the competence acts concerning operational lawful interception of the special services, i.e. ABW, SKW and CBA. In the case of the ABW, due to the specificity of this entity, two acts were examined, i.e. ABW Act and Act on Anti-Terrorism Activities. Chapter IV presents the competence acts of other entities, called "police services", i.e. Police, BNW, KAS, SOP, SG and ŻW. The analysis consisted in examining the compatibility of the provisions of all competence acts with the Constitution of the Republic of Poland. In this context, key rulings of the Constitutional Tribunal were presented, as well as proceedings currently pending before the Constitutional Tribunal. Proceedings initiated by the Constitutional Tribunal but discontinued (e.g. as a result of withdrawal of the application) were also commented on, if they are important from the point of view of the subject of the work and they contribute to its enrichment.

The analysis and evaluation, which is the subject of Chapters III and IV, is embedded in the context of the need for compromise and maintenance of the principle of proportionality between the limitation of civil rights and freedoms and effectiveness of a tools and procedures for combating against crime and ensuring state security and public order. The conducted deliberations allowed to assess the compatibility with the Constitution of the Republic of Poland of the provisions being the subject of the analysis. This led to *de lege lata* and *de lege ferenda* conclusions. In addition to *stricta* constitutional analyses, there were identified a gaps in the operational control management process that give the opportunity to circumvent the regulations, which also causes risks to constitutional rights and freedoms.

The last chapter of the work is chapter V entitled "Induction of evidence from operational lawful interception into the criminal proceedings", under which an analysis and assessment of legal solutions related to the trial's use of evidence obtained as a result of operational lawful interception, including the question of the legality (admissibility) of evidence was carried out. As part of this chapter of the work, the compatibility of Article 168b of the Code of Criminal Procedure with the Constitution of the Republic of Poland was

¹⁴ Act of 16 July 2004 Telecommunications Law, consolidated text: Journal of Laws of 2022, Item 1648 with subsequent amendments.

analyzed, and the issue of the possibility of using Article 168a of the Code of Criminal Procedure to introduce of materials from lawful interception to criminal proceedings.

The work ends with the Summary, in which the most important conclusions resulting from the analysis of the research problem formulated in the work were presented, i.e. whether, and if so, which legal regulations of state services regarding operational lawful interception require changes from the point of view of constitutional standards in the field of rights and freedoms of individual? The *de lege ferenda* conclusions were also recapitulated.

The analysis allowed to respond to the formulated research problem, confirming the adopted thesis that most of the provisions of the competence acts, as a rule, meet the constitutional standards and reflect the essence of constitutional regulation. At the same time, provisions that still raise doubts as to their constitutionality were indicated, e.g. the lack of a positive information obligation after the end of operational lawful interception, or the lack of an upper time limit for the use of eavesdropping by the ABW and the SKW.