

TRANSFORMATION OF THE SECURITY SYSTEM OF CIVIL AIRPORTS IN TERMS OF THE AMENDMENT OF THE AVIATION LAW

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Abstract. Civil airports are an important piece of critical infrastructure but are constantly vulnerable to acts of unlawful interference. Therefore, since the beginning of the development of aviation, they have been the subject of increased concern throughout the international aviation community. This is reflected in the regulations on civil aviation activities and their protection developed by the International Civil Aviation Organization (ICAO) and the European Union (EU). Poland has adopted all the regulations on civil aviation, including airport security, enacted by these two organizations. This was reflected in the amendment of the Polish Aviation Law. The purpose of this article is to present the changes in the responsibility for conducting security checks under the Aviation Law. The introduced changes in the civil aviation security system in the Republic of Poland, including the system of civil airport security, have not reduced the state of security. Nevertheless, it should be noted that each security service in the face of the same threat, differently assesses the need for security, which may result in different actions. This makes it all the more important to constantly monitor the relevant aviation authority and services overseeing the work of private security companies.

Keywords: security; airport security; ICAO; European Union; Aviation Law.

INTRODUCTION

Security is one of the basic needs of man, and its provision is one of the most important functions of the state by guaranteeing protection from existing threats [Nowak 2007, 9]. Threats have accompanied man since time immemorial, but they change their character and scope as society develops [Bąk and Ciekanowski 2012, 26]. Protection of civil aviation, including civil airports from various types of threats, has been the subject of increased concern throughout the international aviation community since the beginning

of the development of aviation. On September 11, 2001, the terrorist attacks carried out in New York forced the introduction of international civil aviation, and appropriate, tightened security procedures [Piasecka, Maniszewska, and Borkowski 2022, 9]. Civil airports are an important component of critical infrastructure¹ but are constantly exposed to acts of unlawful interference [Polkowska 2024, 135-36]. The term acts of unlawful interference is used to describe acts that threaten the security of civil aviation in the terminology of the International Civil Aviation Organization (ICAO) [Żylicz 2002, 57], used in Annex 17 to the Convention on International Civil Aviation [Polkowska 2019, 162-65]. Ensuring security at civil airports is derived from the real-time picture and the anticipated *modus operandi* of a potential adversary who may commit an unlawful and intentional act of interference. Ensuring security at civil airports is derived from the real-time picture and the anticipated *modus operandi* of a potential adversary who may commit an unlawful and intentional act of interference. Nevertheless, recent advances in artificial intelligence technology have led to a surge in applications based on facial recognition, which has greatly facilitated the fight against terrorists [Polkowska 2024, 164-65]. As a result of the analysis of the literature on the subject and based on the authors' experience, an attempt was made to find an answer to the research problem, which was formulated as follows: How did the amendment of the law affect the security system of civil airports?

1. CIVIL AIRPORT SECURITY

A civil airport is a public-use airport used for commercial flights. These airports are part of the critical infrastructure of the state. Civil airports have a system character [Sienkiewicz 1994, 268]. The system, in a general sense, is a system of interconnected elements that have a certain structure and constitute an orderly whole. Taking into account that civil airports, provide specific and rapid movement of people, goods, and services, it is necessary to provide them with an appropriate system of protection against terrorist threats [Żurawski and Oskierko 2024, 71].

Civil airport security should be considered as a component of air security, which is a component of national security. Some experts pointed out that the unambiguous identification of individual types of security, including national security is difficult to define, the reason for which is, among other things: (1) the formulation of definitions that are too narrow or too broad; (2) the definition of individual types of security based on general security, without linking it to the entity, which is the state; (3) tying a given type of security

¹ Act of 26 April 2007 on crisis management, Journal of Laws No. 89, item 590 as amended.

to the same type of threat; (4) the subordination of all types of security exclusively to one entity, i.e. the state and its objectives [Kitler 2011, 45].

There are two designations of security in air communications, the first being operational security relating to flight operations, and the second being protection from acts of unlawful interference or terrorist threats. The generality and multiplicity of categories that relate to the concept of security require subject and object clarification. Both terms serve to ensure the safety of passengers and non-passengers. However, a comparison of Polish and English-language terms used to describe “safety” allows one to see the differences, which are that the two English-language terms (safety and security) correspond to a single Polish term “safety” [Siadkowski 2013, 58]. The term safety refers to the rules of operation of aircraft, while – “security”, is the organization of the system of civil aviation security, including the security of civil airports.

The area of security is characterized by proactive action by the security system to counter threats. Threats to civil aviation arise from deliberate action against the security of civil aviation, which is one of the forms of threats of the modern world, and civil aviation has become the target of various terrorist or criminal activities. The terminology used to describe acts that threaten the security of civil aviation is constantly evolving [Urban 2021, 134]. This organization of the civil airport security system includes security services that form a single entity. Each of these entities has strictly defined tasks that it is obliged to carry out. Thus forming an organization, the entities combined into a whole, provide comprehensive implementation of civil airport security policy.²

The airport authorities – represented by the airport manager – are responsible for the overall functioning of a civil airport, the performance of its security tasks, and respect for international and EU legal standards and regulations, which the Polish authorities, including the aviation authority, have undertaken to observe and apply. It is he who, according to Article 7 of the Law on the Protection of Persons and Property, is the head of the entity he directly manages. He is responsible for organizing and supervising activities aimed at protecting the civil airport from acts of unlawful interference.³

The security of civil airports in Poland should be considered based on several legal acts that impose several obligations on managers. The basic legal

² Security services – Border Guard, Police, Internal Security Agency, and airport security service, perform tasks at the airport (Announcement of the Minister of Infrastructure of 17 March 2023 on the announcement of the consolidated text of the Regulation of the Minister of Infrastructure on the National Civil Aviation Security Programme, Journal of Laws item 774).

³ Announcement of the Speaker of the Sejm of the Republic of Poland of 26 July 2005 on publication of the consolidated text of the Act on the Protection of Persons and Property, Journal of Laws No. 145, item 1221 as amended.

act regulating the rules of performing security tasks is the Law of August 22, 1997, on the Protection of Persons and Property.⁴ In its fifth article, the aforementioned law defines the areas, objects, equipment, and transports important for defense, the economic interests of the state, public security, and other important obligations of the state, which are subject to mandatory protection by specialized armed security formations or appropriate technical protection. According to the Aviation Law, an airport is a public-use airport used for commercial purposes. It consists of many elements interconnected by numerous internal relations, in which the role of the human factor is strongly marked. Another amendment to the Act dates back to July 3, 2002,⁵ based on which an executive act in the rank of a regulation (KPOLC) was enacted. According to this act, the airport manager is responsible for the security of critical infrastructure, which is a civil airport; he has at his disposal the appropriate subordinate services.

2. MODELS OF RESPONSIBILITY FOR SECURITY CONTROL AT CIVIL AIRPORTS

At civil airports, there are three models of responsibility for the realization of tasks in the area of security control. The first is the centralized model, in which responsibility for carrying out security control rests with the state and state bodies or centralized bodies. In the centralized model, civil aviation security activities are mainly left to the state and their implementation is handled by administrative bodies, e.g. CAA – Civil Aviation Authority (US), ULC – Civil Aviation Authority (Poland), and ministries of transport. This model has also been adopted in other countries, including Austria, Finland, Germany, Italy, Portugal, Sweden, and Switzerland [Marzec 2024, 172]. In the second model, a mixed model, this responsibility is divided between airport managers and the state, where often representatives of state bodies are directly involved in the implementation or oversight of tasks. The third model is a decentralized model, in which responsibility for security control is primarily placed on the managers of individual airports. In this model, security-related activities remain the responsibility of airport managers. The implementation of these tasks remains under the supervision of the respective administrative authority. Security control tasks can be carried out by security services directly subordinate to the airport manager or by external entities with the appropriate authority to conduct security control.

⁴ Act of 22 August 1997 on the protection of persons and property, Journal of Laws of 2021, No. 114, item 740.

⁵ Article 187 of the Aviation Law Act, Journal of Laws of 2002, No. 130, item 1112 as amended.

In the European Union, sometimes the conduct of security checks is based on private security companies that report to managers. Strictly, physical security control carried out by private companies is supervised by a state entity, such as the Border Guard [Lickiewicz, Marach, and Urban 2020, 110-26]. The current system of civil airport security in Poland is based on security control carried out by services subordinate to the airport manager, which is supervised by the President of the Civil Aviation Authority (CAA) in cooperation with the Border Guard. In Poland, the range of tasks aimed at ensuring security at a civil airport is wide – from providing physical security and surveillance to responding to acts of unlawful interference. The main entities involved in ensuring security at a civil airport are: a) state authority (governmental, ministerial level) – the Civil Aviation Authority – (ULC) or the relevant ministry; b) security services – Police, Border Guard, Internal Security Agency; c) the airport manager; d) private security companies hired by the airport manager [Urban 2021, 143].

3. TRANSFORMATION OF THE SYSTEM OF CIVIL AVIATION SECURITY IN POLAND IN THE LIGHT OF ANOTHER AMENDMENT TO THE AVIATION LAW

Under EU legislation, each Member State draws up, stands, and maintains a national civil aviation security program. As mentioned above in Poland under the Aviation Law a regulation on the National Civil Aviation Security Program was enacted, which is one of many normative acts in the field of civil aviation security. The supreme legal act in this regard is the Aviation Law, enacted as a consolidated text in 2002. In the field of civil aviation security, this law was not amended until June 30, 2011. Comparing the provisions of the law before the amendment and after the amendment in 2011, it is not difficult to see that in the aforementioned scope, the amendment has been expanded and made more specific. The amendment also introduced several changes to the civil airport security system, bringing it in line with the legal framework and requirements arising from Poland's participation in the European Union.

The European Parliament, bypassing Regulation 300/2008 of March 11, 2008, on common rules in the field of civil aviation security in 2008, gave a clear signal for changes in the civil aviation security system, arguing that it was necessary to improve the content of the previous Regulation 2320/2002 in the light of the experience gained, aiming to simplify, harmonize and ensure transparency of the existing rules and improve the level of security. Under Regulation 300/2008, further EU regulations were enacted, supplementing the rules of civil aviation security and establishing detailed measures for the implementation of common basic standards for civil aviation security. In light of the new provisions of EU law, it became necessary to adapt

national law. Currently, the organization of the system of civil airport security in Poland, is based on the application of the provisions of international conventions and the provisions of European Union law, in particular, Commission Regulation (EU) No. 2015/1998 of November 5, 2015. The indicated regulation establishes detailed measures for the effective implementation of the common basic standards for civil aviation security, introducing harmonized and uniform standards for civil aviation security. Commission Regulation (EU) No. 2015/1998 is a direct legal act, which means that its provisions are also directly applicable in Poland.⁶ Implementing acts of Polish law must be adapted and consistent with this regulation. It is worth noting that this regulation is the result of the direct implementation of an international agreement, which is the Treaty of the European Union. In case of inconsistency with Polish law, this regulation becomes a priority, since it has its source in the international agreement.⁷

At the time of the entry into force of the fundamental legal act regulating all issues related to air communications, which is the Aviation Law, the Republic of Poland was not a member of the European Union. Nevertheless, Poland was actively performing tasks related to ensuring aviation safety based on international obligations, Annex 17 to the Chicago Convention.⁸ After Poland acceded to the European Union, it became necessary to adapt national legislation to Community standards and regulations. As a result, the law of April 20, 2004, on amending and repealing certain acts in connection with Poland's membership in the European Union introduced significant modifications to the Aviation Law.⁹

As part of these modifications, aviation safety regulations, particularly about civil aviation security, were harmonized with existing Community regulations, i.e. legal regulations of the European Union. The purpose of these measures was to achieve consistency and compliance with EU standards and regulations in the field of aviation security. In practice, the alignment of regulations with EU standards resulted in Poland's obligation to apply aviation safety regulations and procedures that were established by the European Union.

⁶ Commission Implementing Regulation (EU) 2015/1998 of November 5, 2015, laying down detailed measures for the implementation of the Common Basic Standards on civil aviation security OJ of the EU L of 2015, No. 299.

⁷ Regulation (EC) 300/2008 of the European Parliament and of the Council of March 11, 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No. 2320/2002 O.J of the EU L of 2008, No. 97, item 72, as amended [hereinafter: 300/2008].

⁸ Annex 17 – International Standards and Recommended Practices. Annex 17 to the Convention on International Civil Aviation. Protection of international civil aviation against acts of unlawful interference, ninth edition, ICAO, p. 1-1.

⁹ Act of 20 April 2004 on the amendment and repeal of acts in connection with the gaining by the Republic of Poland of membership in the European Union on 1 May 2004, Journal of Laws No. 96, item 959.

As a result, national regulations have become compatible with EU regulations, enabling the integration of the Polish aviation system with the European system and ensuring consistent safety standards for all EU member states.

On August 18, 2011, the Law of June 30, 2011, was published – on amendments to the Aviation Law and certain other laws,¹⁰ which was in response to the ongoing changes in the area of civil aviation security in the European Union and was therefore adapted to EU regulations. As a result, services carrying out tasks in the field of security control began to be subject to regulations and procedures, which are aimed at ensuring the effective protection of civil aviation. Amendments to the Aviation Law imposed additional obligations on the manager of a civil airport in the field of protection of civil aviation against acts of unlawful interference. Before the amendment of the law, in the security system of civil airports, the main service responsible for security in terms of security was the Border Guard, which carried out security control of passengers and baggage.

Under Article 186 b(1)(1) of the Aviation Law, the manager is responsible for screening tasks under Regulation 300/2008/EC concerning: a) persons other than passengers and the objects they carry; b) passengers and cabin baggage; c) checked baggage; d) air cargo and mail, air carrier mail and materials, in-flight supplies, and airport supplies before being permitted access to the restricted area, unless the airport operator, air carrier, known consignor of airport supplies, or registered supplier of in-flight supplies has applied the required security controls following Regulation 300/2008/EC.

Under Article 186b(4) of the Aviation Law, the manager performs the tasks imposed on him through the Airport Security Service, or specialized armed security forces operating based on the Act of August 22, 1997, on the protection of persons and property, which, following Article 186b(5) of the Aviation Law, performs the manager's tasks in: a) conducting security checks of passengers, baggage, cargo, mail, in-flight supplies and aviation supplies; b) controlling access to restricted areas of the airport; c) control of passes issued by the airport manager; d) apprehending and handing over to the Police or Border Guard: a person violating security conditions at the airport and a passenger violating the conditions of carriage; a person who without authorization has obtained or attempted to obtain access to the restricted area; a person who has committed or attempted to commit an act of unlawful interference; a person who otherwise violates public order; e) security of the security restricted area and other areas within the meaning of Regulation No. 300/2008/EC; f) activities referred to in Article 3(2) of the Law on the Protection of Persons and Property, i.e. technical security

¹⁰ Act of 30 June 2011 amending the Act – Aviation Law and certain other acts, Journal of Laws No. 170, item 1015.

activities consisting of: installation of electronic devices and alarm systems, signaling the threat of protected persons and property, and their operation, maintenance, and repair in places of their installation; installation of mechanical security devices and means, as well as their operation, maintenance, repair, and emergency opening at their places of installation.

Tasks related to security control are carried out under the supervision of the President of the Civil Aviation Authority, which in the performance of tasks, cooperates with the Border Guard.

The Aviation Law stipulates that the Airport Security Service, in carrying out the tasks referred to in Article 186(5), shall cooperate with competent services or authorities. It introduced a definition of the Airport Security Service, which is an internal security service or specialized armed security formation, operating based on the Law on the Protection of Persons and Property,¹¹ performing tasks for the protection of civil aviation and reporting to the airport manager. If it is necessary to carry out tasks beyond the competence of the airport security service referred to in paragraph 5, the airport manager shall notify the Border Guard or the Police.

The Border Guard, by the provisions of the amendment to the Aviation Law, has transferred to the airport manager tasks related to the conduct of security checks in air communications. As a result, the Border Guard officers have been given the duty to supervise the airport operator's services in this respect. The purpose of the supervision is to monitor the quality of security control, as well as to ensure compliance with the implementation of tasks by the airport manager by the provisions of the current legal acts in the field of civil aviation security. In the current legal order, the airport manager is responsible for the implementation of tasks related to the conduct of security controls in civil aviation. These tasks are carried out under the supervision of the President of the Civil Aviation Authority, who cooperates with the Border Guard in the limited scope contained in the Aviation Law.

By the provisions of the Law on Amendments to the Aviation Law, Article 186b(3), the Border Guard, in terms of cooperation in the supervision with the President over security control activities, has been given the authority to independently undertake activities consisting of: 1) observing and recording the operation of the security checkpoint; 2) controlling the number of airport security personnel at the security checkpoint and immediately signaling to the airport manager any concerns about the mental and physical condition of airport security personnel; 3) immediate response to violations of aviation security regulations by employees of airport security service; 4) promptly addressing requests to the airport manager for the rectification

¹¹ Act of 22 August 1997 on protection of persons and property, Journal of Laws No. 114, item 740 as amended.

of identified serious deficiencies and informing the President of the Authority about these deficiencies; 5) inspecting the possession of certificates referred to in paragraph 10, related to the qualifications of airport security service employees performing security checks; 6) promptly respond to signals of public disorder at the security checkpoint and the adjacent area.

4. COOPERATION OF THE CIVIL AVIATION AUTHORITY WITH THE BORDER GUARD IN THE SUPERVISION OF THE IMPLEMENTATION OF TASKS RELATED TO SECURITY CONTROL

The amendment to the Aviation Law, changed the main entity responsible for the security of civil airports in terms of security, until now it was the Border Guard, which performed tasks in the field of control of passengers and their luggage at civil airports. Under an amendment to the Aviation Law, security tasks were transferred to services subordinate to airport managers on March 18, 2013. For the implementation of this reform, the Border Guard Headquarters developed the Concept for the Border Guard's supervision of the implementation of security control tasks in air transportation performed by the airport manager in the context of the provisions of the Law on Amendments to the Aviation Law.¹²

The concept of supervision includes the experience of state services of selected countries of the European Union, where the system of civil aviation security was based on the supervision of state services over security control in air communication performed by private entities [Żukowski 2012, 89]. It was assumed that the Border Guard officers would carry out activities related to the supervision of security control in the system: 1) stationary – in the form of direct supervision in the case of combined lines of security control stations. The number of teams and the manner of performing tasks in stationary supervision will depend on the current flow of controlled persons and the number of open security control stations; 2) patrolling – performed at a distance that allows the Border Guard officers to be immediately at the security checkpoint. The number of patrols should depend on the infrastructure of the airport in question and the number of security checkpoints; 3) in the monitoring center (CCTV camera system) – which allows the Border Guard to supervise all security checkpoints manned by Airport Security staff, by observing the image transmitted by the CCTV camera system. In addition, in the event of detection of any threat/non-compliance, the Border Guard officer on duty at the monitoring center takes immediate

¹² The concept of supervision of the Border Guard over the implementation of air traffic security control tasks performed by the airport manager in the context of the provisions of the Law on Amendments to the Aviation Law.

intervention action in the form of dispatching a Border Guard patrol to a specific location of the airport; 4) working contacts – designated representatives of the Border Guard with representatives of airport managers, in which they will be informed of identified deficiencies in the process of security control, which will require immediate correction; 5) ad hoc inspections – carried out by officers authorized as national quality control auditors in accordance with the procedure and principles set forth in the Ordinance on the National Quality Control Program in the field of civil aviation security.

Because of the substantive supervision of the airport manager's implementation of security controls in air communications, Border Guard officers continue to receive specialized training in civil aviation security, aimed at maintaining up-to-date knowledge in the area in question, allowing them to take effective and efficient action in situations of potential danger. This is commensurate with the disposition contained in Article 186b(17) – the surveillance activities referred to in paragraph 3 may be performed by persons holding a security control operator certificate listed.

Moreover, it should be mentioned that following the changes introduced to the Aviation Law, Article 186b(15), in justified cases related to the need to ensure public order and public security, the Commander-in-Chief of the Border Guard may, at the request of the President of the Civil Aviation Office, direct Border Guard officers to perform security checks in civil aviation – which also requires having by Border Guard officers performing specialized tasks, authorizations to carry out the tasks in question – security control operator certificates. On June 11, 2013, Agreement No. 32 was concluded between the President of the Civil Aviation Office and the Commander-in-Chief of the Border Guard on detailed rules of cooperation in supervising the implementation of tasks related to security control in civil aviation performed by airport managers.¹³ Further agreements were concluded in the following years in connection with changes in EU regulations.¹⁴

CONCLUSION

The amendment to the Aviation Law changed certain elements of the civil airport security system in Poland. Based on the analysis of the origins and current legal status of the civil airport security system in the context

¹³ Memorandum No. 32 between the President of the Civil Aviation Authority and the Commander-in-Chief of the Border Guard on the detailed principles of cooperation in the exercise of supervision over the performance of tasks related to safety control in civil aviation performed by airport managers of 11 June 2013.

¹⁴ Agreement between the Commander-in-Chief of the Border Guard, and the President of the Civil Aviation Authority on cooperation in the field of civil aviation security of 21 November 2023.

of the amendment to the Aviation Law, as well as direct observation, it can be concluded that the current civil airport security system in Poland based on security services subordinated to airport managers is identical to a model used by all European Union countries. In an organizational context, existing structures and procedures related to the security of civil air transport require further improvement. Personnel problems, such as staff shortages and low salaries, negatively affect the efficiency and motivation of employees of services responsible for security.

That is why private security companies are introduced at airports, supervised by state entities, including the Border Guard. The changes introduced in the civil aviation security system in the Republic of Poland, including the civil airport security system, have not reduced the state of security. However, it should be noted that each security service, when faced with the same threat, assesses the security need differently, which may result in taking different actions. Due to the subjective perception of ensuring safety, a tangle of conflicting interests is created, where discrepancies in the perception of safety appear. The constant control of the relevant aviation authority and services supervising the work of private security companies is even more important.

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