

Patryk Jaki\*

## The Prison Service in the Context of Jurisdiction of a Legal Protection Authority\*\*

### 1. INTRODUCTORY REMARKS

The functioning of every state, regardless of its political system, depends on a network of interdependent public authorities. Such authorities include offices, agencies, institutions, services, guards, and inspectorates. Each of them has an operational profile and working characteristics defined in a statute. In addition, public authorities have a unique organisational structure that optimises the performance of their directly assigned tasks. On the other hand, there is no official directory which would list these institutions in a certain order, for example, based on a pre-established criterion. Therefore, it is generally accepted that ‘a state (public) authority is a unit or a group of persons organised according to the authority vested therein, established by law and equipped with authoritative powers resulting from the nature of state authority’<sup>1</sup>. There are a number of legal instruments that define the aforementioned organisation and activity of a public authority, which already takes the form of a specific public institution, within the legal system of the state. At the same time, the area of activity of such an individual institution constitutes a particular *differentia specifica*, or a distinctive feature that distinguishes a given institution from others. An example of such an area is legal protection, which is characterised not only by a high degree of complexity and a wide range of topics, but also by the multitude of entities entrusted with providing such protection.

The Prison Service is one of the public entities linked to the area of legal protection; it has an appropriate set of powers as well as an organisational and legal model defined by a statute. It is a service with an extensive purview, ranging from responsibilities related to the organisation of the prison system to certain prerogatives in the area of criminal proceedings, and even public order and security. All these tasks are more or less related to the area of legal protection.

While some aspects connected with the functioning of the Prison Service, which concern the specific nature of its work, organisational deficiencies, the professional

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<sup>1</sup> S. Sagan, *Organy i korporacje ochrony prawa*, Warszawa 2001, 16.

status of its officers and working regulations or performance of its statutory tasks, have been widely discussed by experts and scholars<sup>2</sup>, it seems that there is a very interesting opportunity to ‘diagnose’ the Prison Service in a completely different convention, namely the one determined by the proprieties and profile of a legal protection authority.

In light of the above, below I will discuss the Prison Service as a specialised entity belonging to the class of legal protection authorities operating in the state.

## 2. LEGAL PROTECTION AND THE SYSTEM OF LEGAL PROTECTION AUTHORITIES

An analysis how the Prison Service functions as a legal protection authority should start with a general description of what legal protection in the state is. The next step should be to describe the character of the legal protection body directly involved in providing legal protection and the way in which it is defined.

As regards the former, one must note that there are many, albeit similar, definitions of legal protection.

A short review of definitions of legal protection shows that this concept is defined as ‘permanent and organised activities undertaken principally for the purposes of upholding the law’<sup>3</sup>.

Legal protection has also been given a dual definition, which includes the broad and narrow meaning of this concept: in the broad sense, legal protection means the protection of the inviolability of legal norms applicable in a given country, while the narrowly understood meaning of legal protection denotes the activities of, in particular, specialised state authorities aimed to protect the law by way of adjudication (judicial decision-making)<sup>4</sup>.

Other definitions emphasise that the diversity of processes and factual situations or phenomena related to legal protection constitutes a distinctive element of legal protection. According to this approach, legal protection means activities taken for the purpose of upholding the law by specialised entities<sup>5</sup>. Here, legal protection can assume the form of protecting the law or a legal right, or have an institutional or non-institutional dimension<sup>6</sup>. Moreover, it has been correctly argued that legal protection is not accorded to a specific individual, but to the society in its entirety<sup>7</sup>.

<sup>2</sup> W. Ambrozik, *Slużba więzienna wobec problemów resocjalizacji penitencjarnej* [in:] W. Ambrozik, P. Stępiak (eds.), *III Krajowe Sympozjum Penitencjarne*, Poznań–Warszawa–Kalisz 2004, 496; M. Kusiak, *Slużba Więzienna wobec przestępczości zorganizowanej*, ‘Przegląd Więziennictwa Polskiego’ 56/57(2007), 133–166; J. Migdał, *Slużba więzienna – model a rzeczywistość. Próba oceny*, ‘Czasopismo Prawa Karnego i Nauk Penalnych’ 1(2005), 139–151; M. Porowski, *Slużba więzienna i czynniki decydujące o prestiżu zawodu*, ‘Studia Kryminologiczne i Penitencjarne’ 18(1987), 199–221; T. Przesławski, *Slużba więzienna w Polsce. Administracja i podstawy działania*, Warszawa 2012, 223; T. Przesławski, *Ustrój administracji Slużby Więzienniczej w prawie polskim*, ‘Przegląd Więziennictwa Polskiego’ 67/68(2010), 61–84; Ł. Cora, *Zatrzymanie penitencjarne w świetle ustaw o Policji i Slużbie Więzienniczej*, ‘Przegląd Więziennictwa Polskiego’ 58(2008), 35–44; W. Kowalski, *Korupcja w Slużbie Więzienniczej w świetle doświadczeń lat 1995–2004*, ‘Przegląd Więziennictwa Polskiego’ 43(2004), 24–58; J. Pyrcak, *Organizacja i zadania więziennictwa w nowej ustawie o sluzbie więzienniczej*, ‘Przegląd Więziennictwa Polskiego’ 12/13(1996), 50–66; A. Piotrowski, *Wizerunek medialny Slużby Więzienniczej*, ‘Przegląd Więziennictwa Polskiego’ 67/68(2010), 85–93.

<sup>3</sup> S. Włodyka, *Ustrój organów ochrony prawnej*, Warszawa 1975, 9.

<sup>4</sup> B. Janusz-Pohl, *Ustrój organów ochrony prawnej*, Poznań 2011, 13–14.

<sup>5</sup> M. Kruk, *System organów ochrony prawnej*, Warszawa 2006, 21.

<sup>6</sup> M. Kruk, *System...*, 22 et seq.

<sup>7</sup> T. Przesławski, *Slużba...*, n 2 *supra*, 32.

Undoubtedly, the above-presented definitions are very similar semantically and can be reduced to an overarching statement that legal protection denotes the activities of specialised state authorities undertaken in order to protect the law, which, in its basic form, may be repressive or preventive in nature<sup>8</sup>.

Definitions of legal protection clearly distinguish its two essential elements: *the first element* is always the activity of protection (here, the protection of the law), while *the second element* is the existence of a network of established state institutions /entities equipped with specific competencies and with a profile defined by statutory law, with legal protection being an indirect or direct area of their activity. If this is the case, activities taken by those bodies may take the form of repression or prevention. This conclusion means, in turn, that there is a certain segment of state (public) institutions for which, *firstly*, a number of repressive powers have been reserved; i.e., whose actions consist in applying to a person who has violated the law an appropriate legal norm with an arbitrary, or repressive, profile and, *secondly*, who have been given preventive powers; i.e., a set of actionable measures that are or may be activated even before a potential violation of a legal norm<sup>9</sup>.

The second aspect, namely defining a legal protection authority *in statu esse*, is determined by the earlier discussion on the definition of the concept of legal protection. As was the case for the concept of legal protection, a legal protection authority has been defined in many, very similar, ways. In general, these definitions emphasise that a legal protection body always has a specialised profile, the related powers, and a specific organisational structure<sup>10</sup>. In the search for a universal definition of what a legal protection authority is, one can distinguish a general definition, according to which it is simply 'an authority established specifically to provide legal protection and organised specifically for this purpose'<sup>11</sup>.

### 3. LEGAL BASIS OF THE PRISON SERVICE AND ITS RESPONSIBILITIES

The presentation of the definitions of legal protection and a legal protection body brings a further need to confront these findings with the current model of the Prison Service. First of all, one needs to determine and present the legal basis for the operation and organisation of the Prison Service.

The key legal instruments for the Prison Service is the Prison Service Act of 9 April 2010 ('PSA')<sup>12</sup>.

The PSA defines the Prison Service as a uniformed and armed apolitical organisation subordinate to the Minister of Justice, with its own organisational structure.

Pursuant to the PSA, the key responsibilities of the Prison Service include (1) implementing penitentiary and re-socialisation measures for persons sentenced

<sup>8</sup> S. Serafin, B. Szmulik, *Organy ochrony prawnej*, Warszawa 2007, 1 et seq.

<sup>9</sup> S. Serafin, B. Szmulik, *Organy...*, 2.

<sup>10</sup> M. Kruk, *System organów ochrony prawnej*, Warszawa 2006, 31; B. Janusz-Pohl, n 4 *supra*, 18; J. Bodio, G. Borkowski, T. Demendecki, *Ustrój organów ochrony prawnej, część szczegółowa*, Warszawa 2016, 23; S. Serafin, B. Szmulik, *Organy ochrony prawnej*, Warszawa 2007, 4.

<sup>11</sup> S. Włodyka, n 3 *supra*, 24.

<sup>12</sup> Consolidated text of the PSA was published in the Polish official journal Dziennik Ustaw (Dz.U.) 2018, item 1542.

to imprisonment, primarily by organising work conducive to the acquisition of professional qualifications, teaching, cultural and educational activities, physical culture and sports activities, and specialist therapeutic measures; (2) executing pre-trial detention orders in a way that secures the integrity of proceedings in cases of criminal or fiscal offences; (3) ensuring the respect for the rights of persons sentenced to imprisonment or put in pre-trial detention and persons whose custodial sentences or coercive measures involving deprivation of liberty are enforced, and in particular upholding their right to humane living conditions, dignity, healthcare, and religious care; (4) ensuring humane treatment of persons deprived of their liberty; (5) protecting the public against perpetrators of criminal or fiscal offences held in prisons and pre-trial detention centres; (6) assuring order and security in prisons and pre-trial detention centres; (7) executing pre-trial detention orders and custodial sentences and coercive measures resulting in deprivation of liberty on the territory of the Republic of Poland if such measures are to be executed in prisons or pre-trial detention centres and result from the enforcement of a decision issued by a competent authority; (8) liaising with the relevant foreign national organisations and international organisations on the basis of international treaties and agreements; (9) implementing the activities performed by entities referred to in Article 43g of the Criminal Enforcement Code (i.e., entities providing electronic tagging services).

It is also worth noting that the above responsibilities entrusted to the Prison Service are complemented by the general powers in the area of internal and external public security: the Prison Service, within the limits defined by the Minister of Justice, maintains order and security in the office that provides organisational support for the Minister of Justice and in the National Public Prosecutor's Office. Moreover, under Article 35 PSA, the Prison Service is entrusted with many other responsibilities in the area of security, which can be described as extraordinary external powers, for example, in the event of a declared mobilisation or the outbreak of war. In this case, officers employed by the Prison Service under a service arrangement become, by operation of law, wartime active-duty officers and retain this status until discharge<sup>13</sup>. During a period of a political and military crisis or war, the Prison Service operates with the manpower and equipment that it had when the state of emergency was declared. In wartime, the Prison Service carries out tasks related to the execution of custodial sentences, pre-trial detention, the establishment of internment centres under the State of Emergency Act of 21 June 2002<sup>14</sup> and the Martial Law Act of 29 August 2002<sup>15</sup>, as well as 'special protection tasks' under the Regulation of the Council of Ministers of 24 June 2003 on the facilities of particular importance for the security and defence of the state and their special protection<sup>16</sup>. Moreover, the Prison Service plays a role in the

<sup>13</sup> The Prison Service Act of 9 April 2010, consolidated text published on 24 February 2017 (Dz.U. 2017, item 631).

<sup>14</sup> The State of Emergency Act of 21 June 2002, consolidated text published on 28 September 2017 (Dz.U. 2017, item 1928).

<sup>15</sup> The Act of 29 August 2002 on Martial Law and the Powers of the Commander-in-Chief of the Armed Forces and the Principles of Their Constitutional Subordination to the Authorities of the Republic of Poland (consolidated text published on 28 September 2017 (Dz.U. 2017, item 1932).

<sup>16</sup> Regulation of the Council of Ministers of 24 June 2003 on the facilities of particular significance to the security and defence of the state and their special protection (Dz.U. 2003 No. 116, item 1090).

development of the defence system, for instance through maintaining internal security and order<sup>17</sup>.

The legal basis for the operation of the Prison Service also includes the provisions of the Criminal Enforcement Code<sup>18</sup> and the provisions of several regulations on the basis of which the Prison Service performs tasks related to the execution of pre-trial detention orders, custodial sentences and coercive measures resulting in the deprivation of liberty. The aforementioned responsibilities of the Prison Service concerning the execution of pre-trial detention orders, custodial sentences and coercive measures resulting in the deprivation of liberty are directly related to the conduct of criminal proceedings in the broad sense. Therefore, the above list of legislative bases for the operation of the Prison Service should be extended to include certain sections of the Criminal Procedure Code, but, most of all, by the provisions of the Regulation of the Minister of Justice of 21 December 2016 on the procedural and organisational rules of serving custodial sentences<sup>19</sup> and the Regulation of the Minister of Justice of 22 December 2016 on the procedural and organisational rules of pre-trial detention<sup>20</sup>. The key responsibilities of the Prison Service in this area, as set out by these legal instruments, are to ensure the protection of the public and the safety of prisoners.

Studies on the structure of powers and responsibilities of the Prison Service reveal an interesting aspect concerning its specific tasks, namely, the capabilities linked to operational and intelligence-gathering activities performed by the Prison Service. Some authors consider these capabilities a special kind of power vested in the Prison Service. It is emphasised, however, that this is not a capability vested in the Prison Service *per se*, because such sensitive operations can only be carried out by the Prison Service at the request of other authorised services. On the other hand, admittedly, there is no statutory prohibition of such activities being performed by the Prison Service. Nevertheless, proponents of this view rightly point out that ‘while the Prison Service is not explicitly listed as a “cooperating entity”, prisons and pre-trial detention centres as organisational units of the Prison Service fall within the definition of “public utility institutions”, which are obliged to provide assistance to other services, including by performing operational and intelligence-gathering activities. No law prohibits these activities from being carried out on the premises of penitentiary facilities. Accordingly, the Prison Service could, acting within its remit, provide assistance to other entities in carrying out operational and intelligence-gathering activities as required by law.’<sup>21</sup>

Apart from the tasks already presented, the specific nature of the work of the Prison Service can be described by referring to individual powers vested in its officers.

<sup>17</sup> Regulation of the Council of Ministers of 24 November 2009 on the on the militarisation of organisational units responsible for national defence or security (Dz.U. 2009 No. 210, item 1612), Directive of the Minister of Justice of 31 July 2013 on the system of on-site standby duty (official gazette Dziennik Urzędowy Ministra Sprawiedliwości, item 242).

<sup>18</sup> The Criminal Enforcement Code of 6 June 1997 (Dz.U. 2018, items 652 and 1010).

<sup>19</sup> Regulation of the Minister of Justice of 21 December 2016 on the procedural and organisational rules of serving custodial sentences (Dz.U. 2016, item 2231).

<sup>20</sup> Regulation of the Minister of Justice of 22 December 2016 on the procedural and organisational rules of pre-trial detention (Dz.U. 2016, item 2290).

<sup>21</sup> A. Cempura, *Czynności operacyjno-rozpoznawcze prowadzone w aresztach śledczych i zakładach karnych*, Prokuratura i Prawo 10(2011), 123 et seq.

On the basis of Article 18 PSA, Prison Service officers, while on duty, have the right to request identification documents from persons applying for admission to and leaving the premises of organisational units, and to deposit identity documents of persons staying on the premises of an organisational unit; Prison Service officers also have the right to request identification documents from officers and employees entering and leaving the premises of an organisational unit, demand that these persons hand over dangerous and prohibited articles to their custody, carry out personal checks on such persons and their clothes and shoes, inspect the contents of their luggage, check vehicles entering and leaving the premises as well as the contents of these vehicles, including with the use of technical equipment and sniffer dogs trained in finding narcotic drugs and psychotropic substances or explosives. Moreover, Prison Service officers are authorised to request compliance from persons who disturb peace and order in the immediate vicinity or on the premises of an organisational unit, establish illegal contact with inmates or attempt to deliver any objects to the premises of an organisational unit without the officers' consent, and to arrest and detain, on the premises of an organisational unit, any persons reasonably suspected of committing a criminal offence (for the purpose of effecting an immediate transfer of such persons to the custody of the Police) and to remove from the premises of an organisational unit any person who does not comply with instructions issued on the basis of applicable laws and regulations; finally, Prison Service officers have the authority to arrest and detain inmates who: e.g., have escaped from a pre-trial detention centre or a prison, made an escape in transit or from a workplace, etc.

#### **4. ORGANISATIONAL STRUCTURE OF THE PRISON SERVICE**

The Prison Service is a uniformed and armed apolitical organisation subordinate to the Minister of Justice, with its own organisational structure. The current version of the Prison Service Act defines the organisational framework of this service in a separate chapter containing 11 articles. The PSA presents a list of Prison Service authorities and their powers, describes the types of organisational units, and defines other organisational aspects, such as a staffing plan, internal rules of authority and responsibility, and also determines the role and status of the Minister of Justice and Prosecutor General of the Republic of Poland vis-à-vis the Prison Service.

It should be noted at the outset that the Prison Service Act creates an exhaustive list of authorities of the Prison Service. This is particularly important in a hierarchical organisation, as it defines a circle of entities capable of taking personal actions vis-à-vis employees and officers, issuing personal orders and administrative decisions. According to the rules laid down in the PSA, the authorities of the Prison Service are: (1) Director General of the Prison Service, (2) regional director of the Prison Service, (3) director of a prison and director of a pre-trial detention centre, (4) Rector-Commander of the Prison Service Academy, Commander of the Central Prison Service Training Centre, commander of a Prison Service training centre and commander of a Prison Service staff development centre.

Organisational units of the Prison Service include (1) Central Prison Service Board, (2) regional Prison Service inspectorates, (3) prisons and pre-trial detention centres, (3a) the Prison Service Academy.

A review of the above regulations reveals that the Prison Service is an organisation with extremely strong hierarchical subordination, whose organisational structure and powers are based on the principles of strict discipline. This hierarchical arrangement results in vertical subordination of individual internal components of the organisation<sup>22</sup>. The structure of the Prison Service (Central Prison Service Board, regional Prison Service inspectorates, prisons and pre-trial detention centres, Central Prison Service Training Centre, Prison Service training centres and Prison Service staff development centres, etc.) generally reflects the structure of the judicial system. To a lesser extent, it corresponds with the administrative structure of the state<sup>23</sup>. Owing to its structure, the Prison Service is well-integrated into the system of state authorities as a strictly paramilitary organisation that is not only uniformed, but also armed. The above leads to the conclusion that apart from the army and the police, the Prison Service is third largest armed organisation in Poland. This means that the Prison Service enjoys a special status, which allows its responsibilities to be perceived not only as a legislatively imposed purview, but also as an important element of the state security system<sup>24</sup>. In this context, it has been correctly argued that bodies of the Prison Service constitute a key element of the state's internal security system.

Clearly, the relationship between the Minister of Justice and the Prison Service is a special one. As regards the position of the Minister of Justice in relation to the Prison Service, it should be noted that the Minister may influence the Prison Service by issuing instruments of internal law of a dual general nature; such instruments are not sources of universally applicable law, as they are acts of internal law-making, which, according to the Polish Constitution, are classified as acts of the application of the law<sup>25</sup>. These include, for example, directives, guidelines or instructions that can apply to all or specific organisational units of the Prison Service.

## 5. THE PRISON SERVICE IN THE SYSTEM OF LEGAL PROTECTION AUTHORITIES

The starting point for an analysis of the Prison Service from the perspective of the system of legal protection authorities should be establishing a binding definition of 'legal protection authority', which will determine the first line of inquiry.

According to the leading definition, already cited above, a legal protection body is 'an authority established specifically to provide legal protection and organised specifically for this purpose'.<sup>26</sup> Using the above definition as a benchmark, one may

<sup>22</sup> W. Śledzik, *Ustawa o Służbie Więziennej – stan obecny i perspektywy* [in:] W. Ambrozik, H. Machel, P. Stepniak (eds.) *Misja Służby Więziennej a jej zadania wobec aktualnej polityki karnej i oczekiwań społecznych*, Poznań–Gdańsk–Warszawa–Kalisz 2008, 258.

<sup>23</sup> Commentary to Article 1 of the Prison Service Act in M. Mazuryk, M. Zoń (eds.), *Służba więzienna. Komentarz*, Warszawa 2013, online database LEX (accessed on 20 December 2018).

<sup>24</sup> R. Poklek, *Służba Więzienna w systemie bezpieczeństwa państwa*, 'Securitologia' 1/17(2013), 142. As part of its statutory purview, the Prison Service manages a substantial number of penitentiary facilities located all over Poland. At present, the structure of the Prison Service comprises a total of 174 organizational units. This figure includes: (1) the Central Prison Service Board as the leading unit in the structure of the Prison Service; (2) 15 Regional Prison Service Inspectorates; (3) 24 Prison Service training centres and Prison Service staff development centres, with 2 local branches; (4) 67 pre-trial detention centres, with 21 external branches; (5) 87 prisons, with 17 external branches.

<sup>25</sup> J. Zimmermann, *Prawo administracyjne*, Warszawa 2008, 280–281.

<sup>26</sup> S. Włodyka, n 3 *supra*, 24.

note that the Prison Service satisfies the criteria of a so-defined legal protection authority. As a public authority with a unique (very specialised) profile, the Prison Service acts in response to violations of the law in a specific area (the broadly defined prison system, criminal proceedings, public safety), with a view to protecting the law applicable in that area.

The main reasons for including the Prison Service within the category of legal protection bodies include the profile of its activities, the nature of its responsibilities, and its organisational structure. In the context of determining if the Prison Service meets the criteria of a legal protection authority, it has been accurately stated that ‘the Prison Service performs public tasks related to the protection of the population and the enforcement of social justice. The Prison Service performs its tasks in two ways. *First of all*, it detains the perpetrators of criminal offences and undertakes remedial tasks on behalf of the state, cooperating with other governmental, local, and non-governmental entities for this purpose.... *second*, it performs institutional functions for the safety of prisoners, prison staff, and property. Safety is guaranteed by means of placing convicted offenders in a specified type of prison and determining the appropriate system in which they serve their sentences, which may also be a non-custodial system (electronic tagging).’<sup>27</sup>

Since the system of legal protection authorities, which is the main area of activity of each legal protection authority, has already been included in certain major taxonomy systems by scholars, an attempt to classify the Prison Service can also be made. Each of such taxonomy system has its own purpose and employs its own distinguishing criterion, although they can all be described as attempts to systematise a very complicated network of legal protection authorities operating in the state. The number of such classifications is quite large. One of the first taxonomies of legal protection authorities ever created was that which divides such authorities into, firstly, adjudication authorities, which are specifically set up to resolve conflicts; secondly, mediation and conciliation authorities, set up to carry out conciliation activities; thirdly, law enforcement authorities, set up to control the activities of other entities; and lastly, legal assistance authorities, created to provide legal assistance to individuals<sup>28</sup>.

The above division will be used for the purposes of the second line of inquiry into the position of the Prison Service within the system of legal protection legal assistance authorities.

The jurisdictional profile and organisational structure of the Prison Service warrant its inclusion in the group of law enforcement authorities, i.e., entities appointed to control the activities of other entities. Here, the enforcement of the law involves examining the behaviour of certain entities in terms of this behaviour’s compliance with applicable laws and the submission of requests for appropriate measures to be taken if such laws have been, or are likely to be, violated<sup>29</sup>. In this context, the principal responsibilities of the Prison Service include taking control, repressive, preventive, penitentiary and rehabilitation measures against persons sentenced to imprisonment, whenever the law is violated. These measures also

<sup>27</sup> J. Nikolajew, *Prawo skazanych i tymczasowo aresztowanych do bezpieczeństwa*, ‘Probacja’ 1(2018), 123.

<sup>28</sup> S. Włodyka, n 3 *supra*, 25.

<sup>29</sup> S. Włodyka, n 3 *supra*, 18.



seek to ensure and monitor respect for the rights of persons sentenced to imprisonment or put in pre-trial detention, as well as persons who are subject to custodial sentences and coercive measures involving deprivation of liberty. Moreover, the Prison Service is also responsible for ensuring order and safety in prisons and pre-trial detention centres, as well as for executing on the territory of the Republic of Poland pre-trial detention orders, custodial sentences, and coercive measures resulting in the deprivation of liberty, if they are to be carried out in prisons or pre-trial detention centres based on a decision issued by a competent authority, etc.<sup>30</sup> All these tasks fall within the aegis of legal protection.

Relying on the above findings and taking into account the statutory profile of the Prison Service, which is determined by its responsibilities, one must conclude that the Prison Service is a hierarchical, non-judicial legal protection authority, included in the category of legal review authorities and organised for this purpose.

## 6. CONCLUSION

The above analysis has shown unequivocal evidence that the core tasks of the Prison Service focus on areas such as the penitentiary system, criminal proceedings, security and public order. In each of these areas, the law must be protected and enforced, as they are exceptional areas where repression and prevention, as well as a certain kind of control, have their rightful place. After all, the prison system itself is a multi-dimensional, complex and multi-faceted structure. Its proper functioning is influenced by many factors, including various impacts related to the operation of the state that provides the means for the area-specific implementation of legal protection. The effectiveness of this protection depends on the institutions operating in this area. The broadly defined remit of the Prison Service is distinctive due to its paramilitary character, but also its immunity from political pressures and, above all, its representation of a system of legally protected public interests in this very area<sup>31</sup>. In such a complicated territory there must be certain assurances of the implementation of legal protection. In this case, such assurances take a number of forms, among them the institutional form embodied by the Prison Service. The implementation of legal protection in the area belonging, among others, to the prison system as a 'total institution', namely an institution in which 'entire communities of people are treated in a bureaucratic way and, at the same time, are physically isolated from the normal course of life activities'<sup>32</sup> is particularly difficult, complicated and important. In this area in particular, there is, after all, a state-organised force which, on the one hand, interferes with human dignity and liberty by applying isolation and imposing prison rules, but, on the other hand, ensures that a detained person's human rights are respected. The above statement, albeit with obvious differences, holds true for the rules of criminal procedure or public order and security. This is where the Prison Service should be seen as performing the role of a legal protection authority. What is important in this context

<sup>30</sup> <https://www.sw.gov.pl/strona/zadania-i-uprawnienia-sw> (accessed on 20 December 2018).

<sup>31</sup> M. Kaczmarek, *Zakład karny jako system społeczny*, 'Przegląd Więziennictwa Polskiego' 67–68(2010), 98.

<sup>32</sup> T. Zbyrad, *Instytucje opieki totalnej jako forma zniewolenia i kontroli nad człowiekiem potrzebującym pomocy – na przykładzie domów opieki społecznej*, 'Roczniki Nauk Społecznych' 2(2012), 51.

is the broad purpose of the Prison Service as not only a core mechanism of state oppression, but also an organisation safeguarding civil liberties. In this respect, the Prison Service meets state and social needs related to legal protection, which include maintaining public order and implementing the principles of justice through the effective, but also humane, carrying out of punishments, addressing negative psychological effects of incarceration and meeting the basic needs of those who have been punished by detention<sup>33</sup>.

### Summary

#### Patrik Jaki, *The Prison Service in the Context of Jurisdiction of a Legal Protection Authority*

*The Prison Service is one of the key organisations needed for the effective and efficient functioning of the state. It has always been associated with the broadly defined prison system. Meanwhile, the powers of the Prison Service go far beyond the prison system and extend to certain aspects of the criminal procedure or public order and safety. Given the above, it is reasonable to ask the question about the status of the Prison Service within the system of public authorities in the state, which includes, among other things, a comprehensive system of legal protection authorities. It may be thus interesting to look at the Prison Service from the point of view of legal protection authorities.*

**Keywords:** Prison Service, legal protection authority, penitentiary science, state system, legal protection

### Streszczenie

#### Patrik Jaki, *Służba Więzienna w kontekście właściwości organu ochrony prawnej*

*Służba Więzienna jest jedną z ważniejszych formacji potrzebnych dla skutecznego i efektywnego funkcjonowania państwa. Od zawsze jest ona kojarzona z obszarem szeroko rozumianego więziennictwa. Tymczasem jej prerogatywy wychodzą daleko poza zakres więziennictwa i obejmują zarówno elementy postępowania karnego, czy porządku i bezpieczeństwa publicznego. Warto zastanowić się zatem jaka jest pozycja Służby Więziennej w systemie organów publicznych w państwie, w którym między innymi wyróżnia się kompleksowy system organów ochrony prawnej. Interesująca zatem może być kwestia spojrzenia na Służbę Więzienną z punktu widzenia organów ochrony prawnej.*

**Słowa kluczowe:** Służba Więzienna, organy ochrony prawnej, penitencjarystyka, system państwowy, ochrona prawna

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