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## THE COMPARISON OF POLISH AND GERMAN MODELS FOR THE UTILISATION OF POLICE BODY-WORN CAMERAS

### Abstract

This paper presents a comparison of the Polish and German models for the utilisation of police body-worn cameras (Polish: *kamery nasobne*). Three groups of variables were compared: (1) usage policy; (2) situational and social context, and (3) technology. Regarding situational and social context, the circumstances under which body-worn cameras were implemented into police service differed in Poland and Germany. In Poland, the public discourse focused on the use of this technology to reduce the (ab)use of coercive measures by police officers. In Germany, on the other hand, the focus was mainly on the fact that the technology could protect police officers from assaults. Regarding the policy of use and technology, the article compares the models of body-worn camera use in Poland and Germany in the following aspects: the rank and type of legal act (or other document) regulating the use of these devices; the places and areas where events can be recorded; the extent to which events can be recorded by these devices; the retention period of produced recordings; the obligation for an officer to inform a person about the fact of recording an intervention; the integration of these devices and other technologies. German legislation on body-worn cameras is much more detailed than the Polish one in almost every aspect. The Polish legal framework for the use of this technology is, in turn, partly incomplete. The article does not postulate a complete reception of the foreign model into the Polish legal system. However, certain legal solutions could serve as a benchmark or inspiration for the Polish legislator. These could include, e.g., solutions to increase awareness of the

fact that police officers use body-worn cameras; to increase the rights of a person who has been recorded with such a camera; to supplement the provisions on the retention period of recordings; to encompass the possibility and potential scope of integrating body-worn cameras with other technologies, such as, for example, automated pattern recognition based on artificial intelligence algorithms. The latter issue remains outside the area of legal regulation in Poland, whereas in Germany, there are some detailed legal solutions in this respect.

## KEYWORDS

cameras, body-worn cameras, police, surveillance, new technologies, artificial intelligence

## SŁOWA KLUCZOWE

kamery, kamery nasobne, policja, nadzór, nowoczesne technologie, sztuczna inteligencja

## I. INTRODUCTION

Body-worn cameras (BWC; Polish: *kamery nasobne*)<sup>1</sup> are small devices, designed to record video and, most often, audio, placed on a law enforcement officer's uniform and intended to document the course of duty in an overt way. They have now become a standard piece of police equipment in many countries. They appeared in the Polish Police in 2018,<sup>2</sup> when a pilot study was carried out, which involved equipping officers with the first batch of cameras.<sup>3</sup> In Germany, mean-

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<sup>1</sup> In the article I will use the phrase 'body-worn cameras' and the abbreviation BWC interchangeably. It is worth noting that in British-English language publications the abbreviation 'BWV', derived from 'Body-Worn Video', is more common than 'BWC' overtly.

<sup>2</sup> Although the first test cases of their use in the Police took place back in 2016 (Infosecurity24, 'Policja testuje kamery nasobne na ŚDM' InfoSecurity24 (Warsaw, 25 July 2016) <<https://infosecurity24.pl/policja-testuje-kamery-nasobne-na-sdm>> accessed 28 September 2024) and in 2015 (Rafał Wasiak, 'Kryminalistyczno-prawna problematyka wprowadzenia do użytku nasobnych kamer video w Policji' (unpublished PhD thesis, University of Warsaw 2019), 119).

<sup>3</sup> The pilot study consisted of equipping three police garrisons (in Warsaw, Lower Silesia and Podlasie) with a small batch of a total of 190 body cameras for a period of 6 months (Andrzej Chyliński, Anna Krawczyńska, 'System Rejestracji Audio-Wideo' (2018) 157 *Gazeta Policyjna* <<https://gazeta.policja.pl/997/archiwum-1/2018/numer-157-032018/157760,System-Rejestracji-Audio-Wideo.html>> accessed 27 September 2024) and did not result in a report or other form of written evaluation that would be publicly available.

while, they had already been used as police equipment for about five years.<sup>4</sup> In legal language, they are referred to as ‘recording devices worn close to the body’ (German: *körpernah getragenen Aufnahmegeräten*), and in everyday language, the English phrase ‘bodycam’ is used.

Judging from the statements made by representatives of various groups of interest in Poland, most of the stakeholders were in favor of introducing and subsequently increasing the number of body-worn cameras in the Police. It was assumed that the new technology would increase the level of transparency of the Police actions, including the ability to secure reliable evidence;<sup>5</sup> increase professionalism and reduce the use of coercive measures by law enforcement officers;<sup>6</sup> finally, increase the cooperativeness of citizens and protect police officers against groundless complaints.<sup>7</sup> Police executives declared that the presence of body-worn cameras brought good results,<sup>8</sup> although it should be noted that no research or evaluation was presented to confirm this. Sceptical voices were in the minority.<sup>9</sup>

<sup>4</sup> A pilot project in Frankfurt am Main, Hesse, took place in 2013 (Marcel Müller, ‘Bodycam: Eine Erfolgsgeschichte Nimmt Ihren Lauf’ (2016) 65 *Deutsche Polizei. Zeitschrift Der Gewerkschaft Der Polizei* 14). Subsequently, BWCs were deployed in other federal states, such as Bavaria, Baden-Württemberg, Bremen, Hamburg, Rhineland-Palatinate, and Saxony in 2017–2019 (Selina Klämmt, ‘Der Einsatz von Bodycams durch die Polizei und die Vereinbarkeit mit den deutschen Grundrechten’ (unpublished thesis, Fachhochschule Meißen 2021) 5–6). The enumeration is illustrative and not exhaustive.

<sup>5</sup> For example: Najwyższa Izba Kontroli, ‘Przygotowanie wybranych podmiotów do realizacji zadań na rzecz zapewnienia porządku publicznego z wykorzystaniem środków przymusu bezpośredniego’ (Information on audit results, 14 July 2022, No KPB.430.002.2022, ref no 14/2022/P/21/040/KPB, Warsaw 2022) 58 <<https://www.nik.gov.pl/plik/id,26195.vp,28975.pdf>> accessed 27 September 2024.

<sup>6</sup> See Adam Klepczyński and others, ‘Złe traktowanie osób podejrzanych i zatrzymanych przez funkcjonariuszy Policji. Raport z badania ankietowego prowadzonego wśród adwokatów’ (Hel-sinki Foundation for Human Rights 2018); also Wasiak (n 2) 188, 191–192.

<sup>7</sup> For example: statement by Jarosław Zieliński (Secretary of State at the Ministry of Internal Affairs and Administration) to the Parliamentary Committee on Administration and Internal Affairs (24 January 2018) 35 <<https://orka.sejm.gov.pl/zapisy8.nsf/0/0F1A8B1F3E0935E3C-125822C00525115/%624File/0276608.pdf>> accessed 27 September 2024.

<sup>8</sup> For example: a statement by the spokesman for Police Chief Insp. Mariusz Ciarki, quoted in: Patrycja Rojek-Socha, ‘Kamery w policji sprawdzają się – będzie ich więcej’ (*Prawo.pl*, 15 July 2019) <<https://www.prawo.pl/prawnicy-sady/kiedy-policjanci-moga-nagrywac-interwencje.445099.html>> accessed 28 September 2024; also: statement by Dariusz Augustyniak (Deputy Chief of Police) to the Parliamentary Committee on Administration and Internal Affairs (26 October 2022) 11 <<https://orka.sejm.gov.pl/zapisy9.nsf/0/663FD39E55DD40EDC12588EE003704A5/%-24File/0051809.pdf>> accessed 28 September 2024: ‘(...) I cannot imagine that Polish police officers are not equipped with body cameras. This is an equipment that every modern police force has. We can already see the great effects of the use of cameras by Polish police officers’.

<sup>9</sup> The voice of police officers themselves who are users of body cameras, at least during the period of Wasiak’s research, should be qualified as such. From the surveys he conducted, it appears that

At the same time, a meta-analysis was published in Germany, which concluded that none of the eleven evaluation studies previously conducted in the German-speaking states brought convincing evidence that the BWCs were fulfilling their purpose.<sup>10</sup>

## II. AIM OF RESEARCH AND EXPLANATION OF REASONS AND LIMITATIONS

The consideration of the German experience could provide an interesting and relevant point of reference for the administration of body-worn cameras in Poland, whereas such comparisons have not yet been made.<sup>11</sup> Both of those countries have significant similarities in terms of legislation, with the leading role of law written in legal acts rather than *common law*. Both Germany and Poland harmonize their legislation with the EU legal system, including legal acts directly and indirectly related to police body-worn cameras.<sup>12</sup> Thus, some analogies and comparisons between Poland and Germany in terms of the legal environment in which BWCs operate are relevant (having in mind, of course, that due to Germany's federal nature, a plurality of individual states' legal systems are present alongside the federal one). Moreover, the presentation of the German experience and legal framework seems particularly valuable for broadening the debate on body-worn cameras, as to date most of the information on these devices comes from sources

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police officers generally denied that the presence of BWCs improved their professionalism or reduced the number of interventions with physical force; they presented mixed conclusions as to whether the implementation of BWCs reduced aggression and increased cooperative tendencies on behalf of citizens; and, finally, a minority of surveyed police officers supported the introduction of BWCs for all police officers on patrol duty in their units; Wasiake (n 2) 133–170.

<sup>10</sup> Davis Adewuyi, 'Effekte von Bodycams zur Prävention von Gewalt gegen Polizeikräfte: Systematische Übersichtsarbeit zu den Methoden und Ergebnissen von Studien zur Evaluation des Präventionsansatzes' (National Centre for Crime Prevention 2021). It is worth pointing out that the main goal of introducing bodycams in Germany was to reduce aggression against police officers (this thread will be developed later in the article), and the report evaluated the degree to which this very goal was achieved. The meta-analysis included 11 studies, 10 of which were conducted in the German states and one in Switzerland.

<sup>11</sup> A search of scientific and media publications reveals no such cases.

<sup>12</sup> Such as Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA[2016] OJ L119/89 (in Poland recognised in the abbreviation 'DODO').

and studies produced in the United States and other *common law* countries.<sup>13</sup> Whereas the dissimilarity of the legal system and the organizational culture of law enforcement agencies makes such comparisons at least partly inadequate.

However, when drawing comparisons with Germany, it is worth pointing out that the organization of police services in that country is significantly different than in Poland. At the federal level, there are: the Federal Police (*Bundespolizei*) and the Federal Criminal Bureau (*Bundeskriminalamt*). The latter is generally carrying out investigative, intelligence-oriented, information security and international cooperation tasks,<sup>14</sup> so its officers generally do not use body-worn cameras.<sup>15</sup> At the level of individual states (*Länder*), on the other hand, there are local police services – *Landespolizei*, but in most cases the administrative tasks connected with maintaining order in public spaces have been separated and transferred to other agencies, called public order authorities – *Ordnungsbehörden* (also as: *Sicherheitsbehörden* or *Polizeibehörden*).<sup>16</sup>

The main users of body-worn cameras in Germany are the police forces: the federal (*Bundespolizei*) and in the individual states (*Landespolizei*). Both perform patrol duties in an analogous way to Polish police officers. The patrol duty will be the main focus of this article.

Therefore, this work aims to show the different legal frameworks for utilising BWCs as well as the advantages and disadvantages of each solution, in order to provide a benchmark for developing the optimal model for the Polish Police. I have chosen the German model for this in-depth analysis due to the high relevance, resulting from the affinity of the legislative paradigm, functioning in the same EU legal regime, as well as cultural and geographical proximity.<sup>17</sup>

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<sup>13</sup> Sander Flight, 'Taking off the blinders: A general framework to understand how bodycams work' in Bryce Clayton Newell (ed), *Police on Camera: Surveillance, Privacy, and Accountability* (Routledge 2021) 26.

<sup>14</sup> Information based on the official website of the Federal Criminal Bureau: Bundeskriminalamt, 'Unsere Aufgaben' <[https://www.bka.de/DE/UnsereAufgaben/unsereaufgaben\\_node.html](https://www.bka.de/DE/UnsereAufgaben/unsereaufgaben_node.html)> accessed 28 September 2024.

<sup>15</sup> Although it is worth mentioning that they have the authority to record video and audio in public and non-public places without the knowledge of those being recorded (Section 34 of: 2017 Federal Criminal Bureau Act (Gesetz über das Bundeskriminalamt und die Zusammenarbeit des Bundes und der Länder in kriminalpolizeilichen Angelegenheiten) [BGBl I 1354] (FRG)).

<sup>16</sup> Martin Stuttmann, *Polizei- und Ordnungsrecht* (Alpmann Schmidt 2023) 2.

<sup>17</sup> Given that BWCs should feature high recording quality and long battery lifetime even in adverse weather conditions or cold temperatures, seemingly trivial factors such as geographic proximity and similar climates can nevertheless be relevant.

The body of research conducted so far indicates that BWC footage might play a significant role in criminal, misdemeanor and disciplinary proceedings, providing a relevant, comprehensive set of information for the court (or other procedural body), while at the same time, this type of evidence appears extremely rare, at least in Polish judicial practice.<sup>18</sup> For that reason, designing an optimal model for utilising these devices seems even more important.

### III. METHODOLOGY AND TOOLS FOR COMPARING THE POLISH AND GERMAN MODELS OF USING BWCs IN THE POLICE FORCE

In this work, I adopt a functional comparative approach,<sup>19</sup> following these steps: 1) problem statement; 2) objective presentation and 3) functional comparison. In addition, I utilise a tool designed by Sander Flight specifically for BWCs. According to Flight, the model of using body-worn cameras is shaped by three groups of variables: 1) usage policy; 2) situational and social context; and 3) technology. The first group includes the legal framework, methodologies, rules and recommendations under which officers equipped with cameras operate. The second group includes variables related to what tasks are set for the BWCs, how the relationship between the police and the public is shaped, and in what places and situations the use of these devices is expected. The third group relates to the technological characteristics of the devices and systems used in a particular police force.<sup>20</sup> Utilising this schema seems helpful to present a full, comprehensive picture of the use and administration of body-worn cameras. Hence, I based a comparison of the Polish and German models of using these devices on this tool.

Knowing the context surrounding the deployment of the cameras helps to understand legal and technological solutions that were eventually chosen, also fulfilling the first step in the functional comparative approach adopted herein. Therefore, the second group of variables will be described first.

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<sup>18</sup> Jędrzej Kupczyński, 'Research based evaluation of body-worn camera (BWC) footage as evidence in criminal proceedings. Preliminary findings' (EUROCRIM 2024 – 24th Annual Conference of the European Society of Criminology, Bucharest, 13 September 2024).

<sup>19</sup> As described: Ralf Michaels, 'The Functional Method of Comparative Law', in Mathias Reimann, and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (Oxford Academic 2012) 352–359.

<sup>20</sup> Sander Flight (n 13) 29–30.

Next, I will present a number of issues that fall into the first and third group of variables in Flight's schema, thus elaborating how different jurisdictions address challenges and problems pertaining to BWCs (second step in functional comparative approach). These issues are as follows:

1. Rank and type of legal act (or other document) setting the rules for the use of body-worn cameras by police forces – what regulations apply to these devices?
2. Places and areas in which it is possible to record events – is the competence to use a body-worn camera limited to certain spaces, such as public places?
3. Scope of events to be recorded by body-worn cameras – what is specifically recorded and does the officer have the authority to decide whether to record a particular interaction with the camera or not?
4. Retention period of recordings from body-worn cameras and buffer mode – how long are the recordings archived and is there a difference in the retention period depending on the status of specific recordings, e.g., as having evidentiary value?
5. Overt utilisation of BWCs and police officers' duty to inform the person that the intervention is being recorded – is the BWC's operator obliged to inform about the recording and under what conditions?
6. Integration of body-worn cameras and other technologies – are BWCs combined with automated facial recognition, risk prediction or other modern technologies, and if so, under what conditions?

Eventually, I will provide the evaluation and comparison of models adopted in the two jurisdictions.

#### **IV. CIRCUMSTANCES SURROUNDING THE INTRODUCTION OF BODY-WORN CAMERAS TO POLICE FORCES**

Before comparing the model of using body-worn cameras in the two countries, it is worth looking at the context in which they found their way into police forces. In Poland, the debate on equipping the Police with BWCs was fueled by cases that provoked great public emotion, in which police officers abused (or were suspected of abusing) their powers. One of these was the case of Igor Stachowiak, who, after his apprehension, died while in police custody at a station in Wrocław. An important piece of evidence in clarifying the circumstances of this case was the camera footage from a stun gun that was used to shock the detainee in the

unmonitored bathroom of the police station.<sup>21</sup> This happened in 2016, when the BWCs were not used by the Police. Five years later, the devices were present on police officers' uniforms when the death of Dmytro Nikiforenko in a sobering chamber in Wrocław occurred. In that case, police officers were convicted, among other things, of abusing their powers and manslaughter.<sup>22</sup> However, this was not based on evidence from body-worn cameras, because despite the fact that the police officers were equipped with them, they failed to use them to record the intervention.<sup>23</sup> These and some other cases that were included in the dispute on body-worn cameras for the Police have one thing in common. That is the act of abusing (or suspected abusing) of power by officers. It can be hypothesized that in the Polish public debate, the implementation of body-worn cameras has been discussed significantly in the context of counteracting the (ab)use of coercive measures by police officers.

In a sense, the opposite situation took place in Germany. The introduction of body-worn cameras for police officers was also preceded by a case that was widely discussed in the media and aroused public interest. However, the case was of a completely different nature than in Poland. Namely, it concerned the act of obstructing the intervention and an assault (initially verbal and later also physical) on police officers on patrol duty in Frankfurt am Main. Subsequently, the perpetrator of this assault accused, in the press, the officers of mistreating him. This happened in 2011 and resulted two years later in the implementation of a pilot program of body-worn cameras in Frankfurt am Main.<sup>24</sup> Thus, while

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<sup>21</sup> The case resulted in a final conviction of four police officers for abusing their powers and maltreating a person deprived of liberty. All information about the case from: Helsinki Foundation for Human Rights, 'Sąd Najwyższy utrzymał w mocy wyrok skazujący byłych policjantów za znęcanie się nad Igorem Stachowiakiem' (Helsinki Foundation for Human Rights, 28 August 2023) <<https://hfhr.pl/aktualnosci/sad-najwyzszy-utrzymal-wyrok-ws-stachowiaka>> accessed 30 September 2024; and from statement by Sebastian Chmielewski (Director of the Department at the National Prosecutor's Office) to the Parliamentary Committee on Administration and Internal Affairs (24 January 2018) <<https://orka.sejm.gov.pl/zapisy8.nsf/0/0F1A8B1F3E0935E3C-125822C00525115/%24File/0276608.pdf>> accessed 30 September 2024.

<sup>22</sup> Information about the case for: Helsinki Foundation for Human Rights, 'Zapadł wyrok w sprawie śmierci Dmytra Nikiforenki we wrocławskiej izbie wytrzeźwień' (Helsinki Foundation for Human Rights, 6 June 2024) <<https://hfhr.pl/aktualnosci/zapadl-wyrok-w-sprawie-smierci-dmytra-nikiforenki>> accessed 30 September 2024. At the time of writing this article (2024–2025), the conviction was not final.

<sup>23</sup> Information as stated by Jarosław Szymczyk (Chief of Police), to the Parliamentary Committee on Administration and Internal Affairs (21 July 2022) <<https://orka.sejm.gov.pl/zapisy9.nsf/0/412704D5F1CCD335C125888E002E20D3/%24File/0289809.pdf>> accessed 30 September 2024. The failure to use the available body-worn cameras formed the basis for disciplinary charges against the officers in this case.

<sup>24</sup> Müller (n 4) 14; also: Ulrike Kruse and others, 'The de-escalating potential of body-worn cameras: Results from six German police departments' (2023) 88 *Journal of Criminal Justice* 1.

the German discourse on the body-worn cameras in police forces also focused on the potential to reduce aggression, it referred to the aggression directed at officers. The presence of the BWCs was expected to contribute to their safety.<sup>25</sup> This was related to the upward trend observed in practice, as well as highlighted in statistics, in the number of violent crimes against police officers.<sup>26</sup> Thus, the situational context in which body cameras were implemented in the Polish and German police forces differed, which may have affected the legal framework that was designed for the technology, as well as the experience of its utilisation.

## **V. RANK AND TYPE OF LEGAL ACT (OR OTHER DOCUMENT) SETTING THE RULES FOR USE OF BODY-WORN CAMERAS BY POLICE FORCES**

In Poland, the basic issues related to the use of body-worn cameras are regulated in legal acts of statutory and sub-statutory rank, while specific issues are regulated in internal laws and documents of a non-normative nature, partly leaving it to practice. The competence to record events was granted by statutory laws<sup>27</sup> with provisions referring to ‘technical means’ in general and not specifically to body-worn cameras. Taking into account the constitutional principle of the rule of law,<sup>28</sup> it seems that the use of body-worn cameras by public entities not granted with similar statutory powers would not be possible. The chosen model of regulation is in line with the Polish and European (continental) legislative tradition. Yet some reservations may be raised by the fact that the legal framework on BWCs is partially incomplete. Certain (important) issues, such as the obligation of a police officer to record every intervention, have been ‘regulated’ (on the central level) only in a non-normative document.<sup>29</sup>

<sup>25</sup> Müller (n 4) 14.

<sup>26</sup> Over the 2011–2019 period, the number of violent crimes against police officers in Germany increased from 30,628 to 38,635, and the number of victims from 52,240 to 80,084. Cited: Davis Adewuyi (n 10) 7.

<sup>27</sup> In the case of the Police – Police Act of 6 April 1990 [2025] JoL [Journal of Laws] 636, hereinafter: the Polish Police Act, primarily Article 15 section 1 items 5a–5b. In the case of the Border Guard – Border Guard Act of 12 October 1990 [2024] JoT [Journal of Laws] 915, primarily Article 11 section 1, items 7–7b. In the case of municipal and communal guards – Communal Guards Act of 29 August 1997 [2021] JoT [Journal of Laws] 1763, primarily Article 11 section 2.

<sup>28</sup> Article 7 of 1997 Constitution of Republic of Poland: ‘The public authorities act on the basis and within the limits of the law’.

<sup>29</sup> I am referring to the: Chief of Police, ‘Instrukcja użytkowania Systemu Rejestracji Audio-Wideo (RAW), w tym kamer nasobnych pozostających na wyposażeniu policjantów służby prewencyjnej’ (unpublished internal document of the Police, Warsaw 2019), English: *Instruction on the use*

The way these issues are regulated in Germany is similar in some respects. The competence of police forces to record video and audio has been granted in legal acts of statutory rank. These powers are separately regulated in the Federal Police Act (*Bundespolizei*)<sup>30</sup> and in the laws on police services from the individual states (*Länder*).<sup>31</sup> It should be noted that some German statutory-level regulations are more detailed than in the Polish case. They also cover detailed and technical issues such as the time frame of the so-called buffer (loop recording) commonly used in body-worn cameras to document events immediately preceding the moment the recording is initialized,<sup>32</sup> or the purposes, circumstances and procedures under which it is permissible to make recordings in certain categories of places and spaces (this will be discussed later in the article). Some of these regulations, as in the case of the federal police or the police of the state of Schleswig-Holstein, were introduced specifically for the purpose of equipping officers with body cameras and apply directly to these devices, while others – as in the Polish case – regulate the general competence of a given service to perform video and audio recordings.<sup>33</sup>

## VI. PLACES AND AREAS IN WHICH IT IS POSSIBLE TO RECORD EVENTS

In Poland, police officers were initially allowed to use body cameras only in public spaces.<sup>34</sup> This competence was not limited by any criteria<sup>35</sup> or by formu-

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*of the Audio-Video Recording System (RAW), including body-worn cameras remaining on the equipment of police officers of the preventive service (hereinafter: Instruction RAW). For more on this topic, see Jędrzej Kupczyński, ‘Użytkowanie kamer nasobnych przez policję i inne służby w świetle bieżących polskich regulacji prawnych’ (2023) 3 Kwartalnik Krajowej Szkoły Sądownictwa i Prokuratury 67.*

<sup>30</sup> 1994 Federal Police Act (*Bundespolizeigesetz*) (FRG); especially: § 27a.

<sup>31</sup> For example, for Saxony: 2019 Saxon Police Authorities Act (*Sächsisches Polizeibehördengesetz*) (FRG); especially: § 30. For example, for Schleswig-Holstein: 1992 General Administrative Law for Schleswig-Holstein (*Allgemeines Verwaltungsgesetz für das Land Schleswig-Holstein*) (FRG); especially: § 184a.

<sup>32</sup> A body-worn camera in buffer mode continuously records everything, while also continuously overwriting this recording with the next footage after a predefined period, usually 30–60 seconds. If the recording mode is triggered, the buffer is automatically added at the beginning of the recording. If the recording mode is not triggered, no part of the buffer is retained.

<sup>33</sup> E.g. § 14 section (6) of the law from the state of Hesse: 2005 Hessian Public Security and Order Act (*Hessisches Gesetz über die öffentliche Sicherheit und Ordnung*) (FRG).

<sup>34</sup> Article 15 section 1 item 5a of the Polish Police Act.

<sup>35</sup> Apart from the general provision that performing statutory powers by policemen should be in accordance with human dignity, respect and protection of human rights (Article 14 section 3 of the Polish Police Act).

lating a specific purpose that had to be fulfilled for the recording to be made. Starting from February 2019, police officers were granted the power to record video and audio also in places other than public spaces but only during an ‘intervention’.<sup>36</sup> At the same time, the ‘intervention’ has been defined quite broadly, as the involvement of a police officer in the course of an event that may violate legal norms and performance of measures aimed at determining the nature, type and circumstances of the event and undertakings aimed at restoring the violated legal order.<sup>37</sup> As a matter of fact, any manifestation of the performance of statutory powers by a policeman must be recognized as falling within the definition of an ‘intervention’. So, in the current state of the law, the Police have a very broad competence to use body-worn cameras in both public and private spaces.

In Germany, the power to record events with BWCs in various types of spaces appears to be more limited than in Poland, although the details depend on specific regulations at the federal or state level.

In Rhineland-Palatinate, officers are not allowed to use cameras in dwellings and private spaces, but only in publicly accessible places<sup>38</sup> (although there are voices and even legislative proposals indicating the intention to grant them such a competence).<sup>39</sup> Similarly, recording is limited to publicly accessible places for officers in, for example, Hesse,<sup>40</sup> Saxony<sup>41</sup> or Lower Saxony<sup>42</sup> as well as within the federal police.<sup>43</sup> In Thuringia, on the other hand, a casuistic solution has been introduced to prohibit recording in residential places, premises belonging to such places and on fenced private property. At the same time, recording in workplaces, offices, and commercial spaces<sup>44</sup> was allowed, albeit with significant restrictions.

The issue of whether to allow police officers to record sound and video in private spaces, primarily those intended for habitation, has caused and, as it seems, still

<sup>36</sup> Article 15 section 1 item 5b of the Polish Police Act, which became effective 6 February 2019.

<sup>37</sup> Article 15 section 7c of the Polish Police Act.

<sup>38</sup> § Section 31 (1) of the Rhineland-Palatinate law: 1993 Police and Public Order Authorities Act (Polizei- und Ordnungsbehördengesetz) (FRG).

<sup>39</sup> See the February 2024 statement by Michale Ebling, Minister of the Interior of Rhineland-Palatinate, quoted in Stephen Weber, ‘Polizei soll Bodycams auch in Wohnungen nutzen dürfen’ (mittelhessen.de, 6 February 2024). <<https://www.mittelhessen.de/politik/politik-rheinland-pfalz/polizei-soll-bodycams-auch-in-wohnungen-nutzen-duerfen-3288314>> accessed 10 August 2024.

<sup>40</sup> § 14 section (6) of 2005 Hessian Public Security and Order Act (Hessisches Gesetz über die öffentliche Sicherheit und Ordnung) (FRG).

<sup>41</sup> § 30 section (1) of 2019 Saxon Police Authorities Act (Sächsisches Polizeibehördengesetz) (FRG).

<sup>42</sup> § 32 section (4) of the law from the state of Lower Saxony: 2005 Lower Saxony Police and Public Order Authorities Act (Niedersächsisches Polizei- und Ordnungsbehördengesetz) (FRG).

<sup>43</sup> § 27a (1) of 1994 Federal Police Act (Bundespolizeigesetz) (FRG).

<sup>44</sup> § 33a section (5) of the law from the state of Thuringia: 1992 Thuringian Police Tasks Act (Thüringer Gesetz über die Aufgaben und Befugnisse der Polizei) (FRG).

causes debate in Germany. Constitutional arguments,<sup>45</sup> related to the inviolability of the dwelling (regulated in Article 13 of the Constitution of the Federal Republic of Germany),<sup>46</sup> are used against such a solution. The use of body-worn cameras in private spaces, primarily to ensure the safety of the officers themselves, is advocated, on the other hand, by the German Police Union.<sup>47</sup> The argument for this solution, as well as for the implementation of body cameras in general, is the need to ensure the safety of officers.<sup>48</sup> As a result, solutions have been put in place in some states to allow the use of body-worn cameras in private spaces, albeit with certain reservations.

In Bavaria, this is only possible to avert an imminent threat to a person's life, health or freedom; this regulation applies to residential places. In addition, in such places, police officers are not allowed to use cameras in continuous mode, i.e., loop recording.<sup>49</sup> The possibility of recording events with BWCs is, therefore, much narrower than in publicly accessible spaces, where these devices (including loop recording) can be used when the general clause is met – to ensure the safety of a police officer or a third party.<sup>50</sup>

An unconventional and rather strict approach to the use of body-worn cameras in private spaces is introduced in Baden-Württemberg. It pertains specifically to residential places (not office, retail or business premises). The recording of video and audio by BWCs in residential dwellings is permitted only for the purpose of averting an imminent threat to a person's life or health.<sup>51</sup> Moreover, no recording of situations described as 'core sphere of private life' is allowed under any conditions.<sup>52</sup> If a recording is started that subsequently covers such a situation, further

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<sup>45</sup> Frank Schmidt, *Polizeiliche Videoüberwachung durch den Einsatz von Bodycams* (Nomos 2018) 429, cited after Arno Glauch, 'Frank Schmidt: Polizeiliche Videoüberwachung durch den Einsatz von Bodycams' (2019) 4 *Kriminalpolitische Zeitschrift* 247.

<sup>46</sup> 1949 Basic Law for the Federal Republic of Germany (Grundgesetz für die Bundesrepublik Deutschland) (FRG).

<sup>47</sup> German: Gewerkschaft der Polizei <<https://www.gdp.de>> accessed 14 August 2024. For example, the standpoint in favor of using body cameras in private residences is expressed in Sven Neumann, 'Einsatz der Bodycam in Wohnungen. Der lange Weg – ein Kommentar' (2024) 7 DP – Deutsche Polizei Schleswig-Holstein 1 <<https://www.gdp.de/Schleswig-Holstein/DP/2024/DP-7-2024.pdf>> accessed 14 August 2024.

<sup>48</sup> Müller (n 4) 16

<sup>49</sup> § Section 33 (4) sentences 3 and 6 of a law from the state of Bavaria: 1990 Bavarian Police Tasks Act (Gesetz über die Aufgaben und Befugnisse der Bayerischen Polizei) (FRG).

<sup>50</sup> § 33 section (4) sentence 1 of 1990 Bavarian Police Tasks Act (Gesetz über die Aufgaben und Befugnisse der Bayerischen Polizei) (FRG).

<sup>51</sup> § 44 section (5) sentence 2 of the law of the state of Baden-Württemberg: 2020 Police Act (Polizeigesetz) (FRG).

<sup>52</sup> In German: *Kernbereich privater Lebensgestaltung*. This is regulated under § 44 section (7) of 2020 Police Act (Polizeigesetz) (FRG).

recording must be stopped immediately. The concept of the ‘core sphere of private life’ refers to a sphere of intimacy that state authorities may not interfere with under any circumstances, and derives from the case law of the German Federal Constitutional Court.<sup>53</sup>

## **VII. SCOPE OF EVENTS TO BE RECORDED BY BODY-WORN CAMERAS: OBLIGATIONS AND EXCLUSIONS**

It is worth considering whether a given model for the use of BWCs includes such situations, events or interactions between the police and the public that must be recorded with cameras or, on the contrary, that must not be recorded. The answer to this question might be drawn partly from the description of the spaces in which the devices are used. However, this information needs to be summarized and supplemented.

In Poland, an officer equipped with a body-worn camera is obliged to record every intervention and, therefore, every situation in which he or she performs his or her statutory duties. However, this is ‘regulated’ at the central level only in a non-normative document.<sup>54</sup> In some police garrisons, this obligation was additionally included in internal legal acts issued by the chiefs of local Police units.<sup>55</sup> Thus, this is not subject to the discretionary decision of a police officer whether or not to record a particular intervention. Nor have any rules been formulated regarding the prohibition of recording specific events or situations. Therefore, the scope of events subject to recording is very wide. On the other hand, however, BWCs do not record the entire shift of a police officer.<sup>56</sup>

The catalogue of events subject to recording with body-worn cameras in Germany is much narrower, and its exact shape depends on the legislation of the respective state, as well as whether the recording is carried out in a public, private or residential place, what situation it would cover, and finally on the decision of the police officer himself/herself.

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<sup>53</sup> This concept has been present in jurisprudence for several decades, starting with: *Elfes* (1957) 6, 32 (Bundesverfassungsgericht).

<sup>54</sup> See footnote 28. As to the definition of an ‘intervention’ – see the section ‘Places and areas in which it is possible to record events’.

<sup>55</sup> Further information: Kupczyński (n 28) 71.

<sup>56</sup> Apart from the fact that during the whole shift the device is in the buffer mode – the recording is continuously made and erased after 30 seconds.

The solution of recording the entire police officers' shift was adopted neither at the federal level nor in any of the states. Also, generally, no obligation to record every singular intervention was imposed. As a standard, it is up to an officer's discretion whether – given the conditions that allow the use of a body-worn camera – he or she will utilise this device or not. In Thuringia, for example, the initiation of recording depends on an officer's free decision made in a specific situation.<sup>57</sup> This solution differs strongly from the Polish model.

Sometimes, however, a specific type of intervention or situation is defined in which an officer is required to use a BWC. For example, in Berlin (the state), a police officer equipped with a body-worn camera must use it if he/she uses coercive measures against a person or if requested to do so by the person against whom the intervention is being made.<sup>58</sup> In Thuringia, on the other hand, an officer is obliged to make a recording upon instructing that coercive measures may be used or if he/she uses them, as well as when he/she is in the vicinity of another police officer using coercive measures, and finally if it is requested directly by the person against whom the intervention is being undertaken. What is more, the police agency is required to configure or select cameras to trigger automatic recording whenever an officer's firearm is being brought out from its holster.<sup>59</sup>

Such legal solutions, especially in the aspect of making police officers' duties dependent on the will of the person concerned (citizen), seem uncommon from the Polish perspective.

On the other hand, some events and situations that absolutely must not be recorded with body-worn cameras have also been defined. As already indicated, in Baden-Württemberg the use of BWCs is prohibited if a situation falls within the 'core sphere of private life'.<sup>60</sup> A similar prohibition, also relating to the 'core sphere of private life', is adopted in the legislation of Lower Saxony<sup>61</sup> and Thuringia.<sup>62</sup>

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<sup>57</sup> Kruse and others (n 23) 2.

<sup>58</sup> § Section 24c (2) of the Law of the Land of Berlin: 2006 General Law on the Protection of Public Security and Order in Berlin (Allgemeines Gesetz zum Schutz der öffentlichen Sicherheit und Ordnung in Berlin) (FRG).

<sup>59</sup> § 33a section (2) of: 1992 Thuringian Police Tasks Act (Thüringer Gesetz über die Aufgaben und Befugnisse der Polizei) (FRG).

<sup>60</sup> See footnote 51.

<sup>61</sup> § 33 section (2) of: 2005 Lower Saxony Police and Public Order Authorities Act (Niedersächsisches Polizei- und Ordnungsbehördengesetz) (FRG).

<sup>62</sup> § 33a section (6) of 1992 Thuringian Police Tasks Act (Thüringer Gesetz über die Aufgaben und Befugnisse der Polizei) (FRG).

## VIII. RETENTION PERIOD OF RECORDINGS FROM BODY-WORN CAMERAS AND BUFFER MODE

There is no doubt that the recording of an image or voice with the use of body-worn cameras constitutes the processing of personal data. The entity responsible for processing such data – the Police – is obliged to act in accordance with the principle of proportionality.<sup>63</sup> So, the scope of data processing should be at the minimum level, ensuring the achievement of the purpose of this processing. This is affected by, among other things, the period for which the data is being kept by the Police.

In Poland, the retention period for Police body-worn camera recordings is a minimum of 30 days and a maximum of 60 days.<sup>64</sup> This period may be extended if the BWC records contain evidence that is relevant to criminal, misdemeanor or disciplinary proceedings (already underway or to be initiated).<sup>65</sup> Statutory law does not specify how long this period is extended. In practice, the period is set for 1 year.<sup>66</sup> Devices utilised by Polish police officers have a loop recording function – the buffer is set at 30 seconds.<sup>67</sup> After this period, the recorded material is automatically overwritten, unless the recording mode is activated. No statutory law provision makes any mention of the issue of loop recording. Likewise, there is no mention of it in the Instruction RAW document.

In Germany, the retention period for recordings varies from state to state and depends on the purpose for which the recording was made or may fulfill. In the Federal Police, it is 30 days. However, it may be extended under specific conditions, specifically, when it is necessary for the investigation of a crime or serious administrative misconduct,<sup>68</sup> for the abrogation of danger in an individual case; for verifying the legality of police actions, particularly at the request of the person concerned. In these cases, the retention period for recordings is extended to

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<sup>63</sup> Article 13 section 1 of: Act on the protection of personal data processed in connection with preventing and combating crime of 14 December 2018 [2023] JoT [Journal of Laws] 1206; hereinafter: Polish Law Enforcement Data Protection Act.

<sup>64</sup> Article 15b of the Polish Police Act. The recordings are stored in a digital form, on a server, within the police Audio-Video Recording System (according to points VIII and X of the document: Instruction RAW).

<sup>65</sup> Article 15b of the Polish Police Act.

<sup>66</sup> Further on this issue, see Kupeczynski (n 28) 73.

<sup>67</sup> Chyliński, Krawczyńska (n 3).

<sup>68</sup> In German: *Ordnungswidrigkeit* – violation of order. In the legal sense, the concept is similar to the Polish misdemeanor.

6 months as a standard. It can be even longer, but only for the need to prosecute crimes and administrative misconduct or verify the legality of police actions.<sup>69</sup>

A similar, though not identical, model for regulating the length of recordings' retention is also adopted in the laws of the individual states. In the case of the federal police, it is noteworthy that the initiative is partially placed in the hands of the interested party – the citizen – in terms of shaping the length of the processing of personal data, which is an uncommon solution from the Polish perspective.

In Bavaria, the retention period for recordings is two months and can only be extended if the recording in question is necessary for a case of serious administrative misconduct or a criminal offense; also for assessing the legality of police officers' actions, if such an assessment can be anticipated.<sup>70</sup> In Lower Saxony, this period is six weeks, and may be extended in cases where it is necessary for a criminal case or crucial to prevent a lack of evidence.<sup>71</sup> Such a redaction of the legal provision indicates, as it seems, only the auxiliary significance of BWC recording as evidence. This kind of evidence is used exceptionally, in the absence of other available means of evidence.

Going back to the issue of the retention period of recordings – the strict legal solution adopted in Baden-Württemberg is quite unconventional. As a rule, the BWCs are used there only in 60-second loop recording mode. So the typical storage period for recordings is just 60 seconds.<sup>72</sup> In exceptional situations, it is possible to store recordings from the body-worn cameras for a longer period.<sup>73</sup> But in case of recordings made in residential spaces, this requires an additional court approval.<sup>74</sup> Therefore, in the standard situation, there is no retention of recordings at all, but their ongoing deletion. On the other hand, when the described conditions are fulfilled, the recordings from the body-worn cameras are treated as any other form of video surveillance – they are stored for 4 months with the possibility of extension in certain cases related to, among others, the prosecution of crimes and

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<sup>69</sup> § 27a section (4) of 1994 Federal Police Act (Bundespolizeigesetz) (FRG).

<sup>70</sup> § 33 section (8) of: 1990 Bavarian Police Tasks Act (Gesetz über die Aufgaben und Befugnisse der Bayerischen Polizei) (FRG).

<sup>71</sup> § 32 section (4) sentence 7 of 2005 Lower Saxony Police and Public Order Authorities Act (Niedersächsisches Polizei- und Ordnungsbehördengesetz) (FRG).

<sup>72</sup> § 44 section (8) and (10) of 2020 Police Act (Polizeigesetz) (FRG).

<sup>73</sup> Specifically: '(...) if the circumstances justify the belief that this is necessary for the protection of police officers or other persons from danger to life or health'. - Own translation from § 44 section (8) sentence 1 of 2020 Police Act (Polizeigesetz) (FRG). In the case of places intended for residential use, additionally, the threat to life or health must be 'imminent' § 44 section (8) sentence 2 of 2020 Police Act (Polizeigesetz) (FRG).

<sup>74</sup> § 44 section (6) of 2020 Police Act (Polizeigesetz) (FRG).

administrative offences.<sup>75</sup> Thus, the legal solution adopted in the state seems to suggest the primary task of BWCs is to simply improve security during interactions between police officers and the public, rather than to produce evidence for future prosecution.

The opposite legal solution is present in Rhineland-Palatinate, where the use of BWCs in loop recording mode is prohibited completely.<sup>76</sup> Permanent recordings are erased after 30 days, unless further retention is necessary for criminal or serious misdemeanor proceedings; for the aversion of danger in individual cases or for checking the legality of police actions, especially at the request of the person concerned (citizen).<sup>77</sup>

### **IX. OVERT UTILISATION OF BWCS AND POLICE OFFICERS' DUTY TO INFORM THE PERSON THAT THE INTERVENTION IS BEING RECORDED**

Body-worn cameras are used to record events overtly. To fulfill the task of de-escalating aggressive behavior against police officers, the individuals need to be aware that their behavior is being recorded in the first place. Studies conducted to date (outside Poland) suggest that citizens are relatively often not aware at all that officers were equipped with BWCs and were recording the intervention.<sup>78</sup> Hence, the issue of properly informing the public that the police officers are using these devices seems important.

In Poland, a policeman is obliged 'to as much extent as possible' to 'give notice' to the member of the public about recording the video and audio, but only if he or she intervenes in places other than public places, i.e. in private space.<sup>79</sup> Statutory provisions do not regulate possible forms of communication other than 'giving notice' that could increase awareness of the use of BWCs among the citizens.

<sup>75</sup> § 44 section (10) in conjunction with section (11) of 2020 Police Act (Polizeigesetz) (FRG).

<sup>76</sup> § 31 section (3) of 1993 Police and Public Order Authorities Act (Polizei- und Ordnungsbehördengesetz) (FRG).

<sup>77</sup> § 31 section (4) of 1993 Police and Public Order Authorities Act (Polizei- und Ordnungsbehördengesetz) (FRG).

<sup>78</sup> See Cynthia Lum and others, "Body-worn cameras" effects on police officers and citizen behavior: A systematic review' (2020) 16 Campbell Systematic Reviews e1112 (and literature cited therein).

<sup>79</sup> Article 15c of the Polish Police Act. It is worth noting that the Instruction RAW document extends this obligation to all types of spaces and interventions (point V. subsection 5.5.). The internal regulations of individual police units may also chalk up this obligation in a broader way than that implied by the Polish Police Act.

In Germany, the same issue has been regulated somewhat differently. In principle (although differences may arise within the laws of individual states), there is a requirement that the utilisation of body-worn cameras must be done in public; that the participants of the intervention must know that they are being recorded.

In Lower Saxony, for example, the use of BWCs from the perspective of citizens should be ‘recognisable’.<sup>80</sup> Federal legislation mandates that an officer must indicate in an ‘appropriate form’ the fact that a body-worn camera is being used, but may omit this in an emergency situation.<sup>81</sup> In Baden-Württemberg, on the other hand, the obligation to inform about recording with BWCs exists unless it is ‘obvious’.<sup>82</sup>

Generally speaking, the German legislation focuses on the goal (to use BWCs in an overt way so that the citizens are aware of it. It makes fewer references to the form in which this goal should be achieved (e.g., by ‘giving notice’).

The casuistic legal model from Thuringia bears certain distinctions. As a rule, the ‘appropriate measures’ are required to ensure that body-worn cameras are utilised openly. In addition, an obligation was imposed on officers to inform the persons concerned about the activation of the recording in advance. Only in emergency situations, police officers may omit this obligation. Moreover, the police agency is obliged to configure or select cameras so that the devices emit an optical and acoustic signal upon starting the recording. Finally, officers are mandated – if the situation permits – to instruct the persons concerned about their right to access and review the recording.<sup>83</sup>

## X. INTEGRATION OF BODY-WORN CAMERAS AND OTHER TECHNOLOGIES

Sometimes introducing new technologies to the police service triggers a tendency to extend the use of already deployed tools beyond their originally intended purposes.<sup>84</sup> This is no different in the case of body-worn cameras, which can

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<sup>80</sup> In German: ‘*ist kenntlich zu machen*’. § 32 section (4) sentence 3 of 2005 Lower Saxony Police and Public Order Authorities Act (Niedersächsisches Polizei- und Ordnungsbehördengesetz) (FRG).

<sup>81</sup> § 27a section (2) of 1994 Federal Police Act (Bundespolizeigesetz) (FRG).

<sup>82</sup> § 44 section (10) of 2020 Police Act (Polizeigesetz) (FRG).

<sup>83</sup> § 33a section (4) of: 1992 Thuringian Police Tasks Act (Thüringer Gesetz über die Aufgaben und Befugnisse der Polizei) (FRG).

<sup>84</sup> This phenomenon is known in the literature as ‘function creep’. See: Bert-Jaap Koops, ‘The concept of function creep’ (2021) 13 Law, Innovation and Technology 29.

potentially be combined with a range of other technologies,<sup>85</sup> such as those related to automatic facial recognition, risk prediction, etc. It is worth considering the current and potential future state of BWC integration with other technologies in Poland and Germany in the context of current legislation. A common point of reference is European Union legislation, including, in addition to the aforementioned ‘DODO’ directive, the so-called AI Act,<sup>86</sup> which prohibits, among others, the use of remote biometric identification systems (for instance, automatic facial recognition) in real time, in public spaces, for law enforcement purposes.<sup>87</sup>

Statutory law in Poland does not regulate the possible integration of body-worn cameras (or other police video surveillance systems) with automated facial recognition technology, biometric identification, risk prediction, etc. Nevertheless, the possible implementation of such technologies would have to fall within the scope of statutory tasks of the Police and comply with the principles of processing personal data in connection with preventing and combating crime,<sup>88</sup> and finally with the Constitution of the Republic of Poland.

Also in Germany, detailed statutory regulation of this issue is uncommon.<sup>89</sup> However, some states have introduced legislation explicitly addressing the integration of video surveillance and other new technologies in policing.

The Bavarian police law grants a relatively broad possibility of integrating police recordings with certain automated image processing systems. This also applies to recordings made with body-worn cameras. However, it is only permissible to use systems of automated recognition and interpretation of patterns relating to objects (and not persons).<sup>90</sup> This could include, for example, automated recognition of dangerous objects such as firearms.

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<sup>85</sup> For more on this topic, see William Webster, Diana Miranda and Charles Leleux, ‘Evidence Review into Public Experience and Confidence of Body Worn Video in a Policing Context’ (Scottish Institute for Policing Research 2022) <<https://dspace.stir.ac.uk/bitstream/1893/34460/1/UoS%20BWW%20Final%20June%202022.pdf>> accessed 18 December 2024.

<sup>86</sup> Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 on establishing harmonized rules for artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144, and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) [2024] OJ L.

<sup>87</sup> Article 5(1)(h) of the Artificial Intelligence Act. However, numerous exceptions are provided to this prohibition.

<sup>88</sup> Chapter 3 of Polish Law Enforcement Data Protection Act.

<sup>89</sup> Apart from automated reading of vehicle licence plates. This specific technology has been regulated in most states. However, this is not done with the use of body cameras and, therefore, lies outside the scope of this article.

<sup>90</sup> § 33 section (5) in conjunction with section 4 of 1990 Bavarian Police Tasks Act (Gesetz über die Aufgaben und Befugnisse der Bayerischen Polizei) (FRG).

In Baden-Württemberg, it is possible to use real-time automated image processing algorithms, but only for identifying behavioral patterns that indicate the commission of a crime. This is only permitted in places that are at high risk of crime, as well as during gatherings and public events when the conducted risk analysis indicates a threat of a terrorist attack.<sup>91</sup> This applies mainly to stationary forms of video surveillance, and given the type of technology permitted, it would be impractical to correlate it with body-worn cameras. Currently, the technology is used to monitor, by stationary video surveillance systems, part of the inner city of Mannheim.<sup>92</sup>

Thuringia, on the other hand, has explicitly banned the combination of body-worn cameras (as well as recorders in police vehicles) with automated facial recognition software.<sup>93</sup>

## **XI. SUMMARY: WHERE ARE SIMILARITIES AND DIFFERENCES, AND WHAT CONCLUSIONS DO THEY BRING?**

The general features of the legal system in Poland and Germany are to some extent alike (apart from the federal nature of the state in Germany). Hence, there are certain similarities in terms of how and from what type of legal acts the BWC utilisation model emerges. This is mainly statutory law. It should be noted, however, that German legislation is far more precise (sometimes even casuistic) in the sense that it regulates a number of detailed issues on BWCs, which are not addressed by any provisions in the Polish legal system. One cannot reasonably postulate excessive casuistry in legislation. Still, it must be seen as a drawback that the Polish regulations lack certain basic issues, like the loop recording (buffer mode), the retention period of recordings of evidentiary significance, and the obligation to record every intervention (while ‘regulating’ these issues in a non-normative Instruction RAW document).

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<sup>91</sup> § 44 section (4) of 2020 Police Act (Polizeigesetz) (FRG).

<sup>92</sup> Landesbeauftragter für den Datenschutz und die Informationsfreiheit Baden-Württemberg, ‘Datenverarbeitungen der Sicherheitsbehörden’ (8 January 2024) <<https://www.baden-wuerttemberg.datenschutz.de/datenverarbeitungen-der-sicherheitsbehoerden/>> accessed 14 December 2024.

<sup>93</sup> § 33a section (9) of 1992 Thuringian Police Tasks Act (Thüringer Gesetz über die Aufgaben und Befugnisse der Polizei) (FRG).

The deployment of BWCs to police forces took place in Poland and Germany in a different social context. The main purpose of these devices was also defined differently. In Germany, they were to increase officers' safety, and in Poland, they were meant as a tool to decrease the (ab)use of coercive measures by the Police.<sup>94</sup> That is why significant differences in the BWCs utilisation model in these countries occur. For the same reason, the possible introduction of foreign solutions into the Polish legal system would have to be limited, taking into account the different social context.

In Poland, police officers are granted the competence to use the BWCs in any place (both public and private) and for any intervention. What is more, an obligation was imposed on them to record every intervention, albeit resulting (at the central level) only from a non-normative Instruction RAW document. There is no exclusion from recording any situation. Recordings are kept for a period of 30–60 days, or longer if they may be of evidentiary value. In the latter case, the statutory law does not specify what this period would be. Similarly, the issue of loop recording is left outside any regulation. In order to raise awareness of the Police's use of BWCs, officers were mandated, as far as possible, to give notice to citizens on recording. According to the Polish Police Act, this obligation is limited to spaces other than public places.

In Germany, it is quite different – the competence to use BWCs by police forces is limited in some states only to public spaces. In the instances in which a registration in private places is allowed, it usually comes with a number of restrictions and limitations. German police officers generally make discretionary decisions whether or not to register an intervention. Yet, there are certain situations in which they are obliged to turn the cameras on (such as the use of coercive measures in Thuringia) or forbidden to use them (when a 'core sphere of private life' would be recorded). It was precisely defined how long the recordings should be kept (usually 1–2 months) and for how long this period can be extended (usually 4–6 months) and under what conditions. Loop recording (buffer mode) was also regulated, specifying the conditions under which it can and cannot occur, and even the length of the buffer (usually 30–60 seconds). The obligation to inform about the use of BWCs has sometimes been regulated even more generally than in Poland, defining the purpose (overt recording) rather than the means to achieve it ('give notice'). However, officers' duties in this regard have sometimes been casuistically defined.

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<sup>94</sup> It is worth noting that a similar narrative about body-worn cameras is present in the United States, see, for example: U.S. Department of Justice, 'Justice Department Awards over \$23 million in Funding for Body Worn Camera Pilot Program to Support Law Enforcement Agencies in 32 States' (21 September 2015) <<https://www.justice.gov/opa/pr/justice-department-awards-over-23-million-funding-body-worn-camera-pilot-program-support-law>> accessed 20 January 2025.

The fact that Polish officers can, or rather must, use BWCs everywhere and at every intervention seems to correlate with the assumption that these devices are primarily intended to limit the (ab)use of coercive measures by the police officers. Modifying this model towards the German one, for instance, leaving the decision whether or not to record an intervention to the police officers' discretion, would not contribute to achieving this postulate. Besides, the German model is not free of flaws. It sometimes seems to impose obligations on police officers that are difficult to implement. In Baden-Württemberg, for example, an officer intervening in a private apartment is obliged to make a rather far-reaching legal analysis of the factual circumstances: whether in a given situation the recording would fulfill a statutory purpose, such as the aversion of an imminent threat to life, and at the same time whether it would not accidentally violate a 'core sphere of private life'. Whereas, especially in emergency situations, there might be no time for an officer to analyze such legal considerations prior to the decision on activating a body-worn camera.

However, certain solutions adopted in Germany deserve attention as beneficial for implementation in Poland. The technology of automatically triggering a recording when a service firearm is brought out of its holster, present in Thuringia, seems to address the natural risk of a police officer not being able to focus his or her attention on starting the recording in a dynamic life-and-death situation.

Moreover, strengthening the rights of the person who was recorded with a body-worn camera is worth considering. The German model stipulates that such a person can influence the retention period of the recordings – at his or her request, the period can be extended when it is necessary to assess the legality of police actions. It also seems to be beneficial to allow, as in Thuringia, persons concerned to access and review the recordings on which they have been captured.

Finally, the issue of 'giving notice' to citizens about registration seems to require some improvement in Poland. There are no grounds for limiting this obligation to private places, as in the Polish Police Act provisions. In turn, without legislative intervention, it would be reasonable to implement solutions aimed at increasing the visibility of the cameras themselves, awareness of the fact that they are being used, or clarity of the activation of the recording mode (by emitting a clear signal).<sup>95</sup> This could contribute, without burdening the police officers with additional

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<sup>95</sup> The BWCs used by the Polish Police emit a single voice message 'I am recording' when the recording mode is activated, and a light signal (red LED) when the mode is activated. It should be noted, however, that the voice message is quite quiet and can be drowned out even by city noise. What is more, it is usually emitted before the participants of the intervention are near the camera (which is natural – a police officer activates the camera immediately before interacting with citizens, for example, upon approaching them). The red LED is not clearly visible. It is easy to

duties, to broaden citizens' awareness of the fact that they are being recorded. And after all, such awareness is necessary if the BWCs are to bring a de-escalating effect. Perhaps a certain point of reference would be the Frankfurt police's existing practice, whereby officers wear visible, reflective vests with the words 'Videorecording'.



**Fig. 1:** Opportunities to increase the visibility of body-worn cameras. Left: Polish police officer; right: a police officer in Frankfurt am Main wearing a reflective vest. Sources respectively: Szymon Zięba, 'Kamera osobista dla policjanta. Każda interwencja będzie nagrana' (Trojmiasto.pl, 30 September 2019) <<https://www.trojmiasto.pl/wiadomosci/Kamera-osobista-dla-policjanta-Kazda-interwencja-bedzie-nagrana-n138358.html>> accessed 18 December 2024; and Müller (n 4) 17.

Thus, while it would be unreasonable to postulate a broad, copy-like adoption of the entirety of German regulations into the Polish model, certain specific solutions could be applied for the benefit of achieving the goals set for the BWCs. All the more so because, as has been pointed out, the Polish model is not free of gaps that would require urgent supplementation.

## XII. ACKNOWLEDGEMENT

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overlook it given the element of stress, anxiety and emotion that can accompany the people against whom the intervention is being undertaken.

## REFERENCES

Adewuyi D, 'Effekte von Bodycams zur Prävention von Gewalt gegen Polizeikräfte: Systematische Übersichtsarbeit zu den Methoden und Ergebnissen von Studien zur Evaluation des Präventionsansätze' (National Centre for Crime Prevention 2021)

Bundeskriminalamt, 'Unsere Aufgaben' <[https://www.bka.de/DE/UnsereAufgaben/un-sereaufgaben\\_node.html](https://www.bka.de/DE/UnsereAufgaben/un-sereaufgaben_node.html)> accessed 28 September 2024

Chief of Police, 'Instrukcja użytkowania Systemu Rejestracji Audio-Wideo (RAW), w tym kamer nasobnych pozostających na wyposażeniu policjantów służby prewencyjnej' (unpublished internal document of the Police, Warsaw 2019)

Chyliński A, Krawczyńska A, 'System Rejestracji Audio-Wideo' (2018) 157 *Gazeta Policyjna* <[https://gazeta.policja.pl/997/archiwum-1/2018/numer-157-032018/157760\\_System-Rejestracji-Audio-Wideo.html](https://gazeta.policja.pl/997/archiwum-1/2018/numer-157-032018/157760_System-Rejestracji-Audio-Wideo.html)> accessed 27 September 2024

Sander Flight S, 'Taking off the blinders: A general framework to understand how bodycams work' in Bryce Clayton Newell (ed), *Police on Camera: Surveillance, Privacy, and Accountability* (Routledge 2021)

Glauch A, 'Frank Schmidt: Polizeiliche Videoüberwachung durch den Einsatz von Bodycams' (2019) 4 *Kriminalpolitische Zeitschrift* 247

Helsinki Foundation for Human Rights, 'Sąd Najwyższy utrzymał w mocy wyrok skazujący byłych policjantów za znęcanie się nad Igorem Stachowiakiem' (Helsinki Foundation for Human Rights, 28 August 2023) <<https://hfhr.pl/aktualnosci/sad-najwyzszy-utrzymal-wyrok-ws-stachowiaka>> accessed 30 September 2024

Helsinki Foundation for Human Rights, 'Zapadł wyrok w sprawie śmierci Dmytra Nikiforenki we wrocławskiej izbie wytrzeźwień' (Helsinki Foundation for Human Rights, 6 June 2024) <<https://hfhr.pl/aktualnosci/zapadl-wyrok-w-sprawie-smierci-dmytra-nikiforenki>> accessed 30 September 2024

Infosecurity24, 'Policja testuje kamery nasobne na ŚDM' *InfoSecurity24* (Warsaw, 25 July 2016) <<https://infosecurity24.pl/policja-testuje-kamery-nasobne-na-sdm>> accessed 28 September 2024

Klämmt S, 'Der Einsatz von Bodycams durch die Polizei und die Vereinbarkeit mit den deutschen Grundrechten' (unpublished thesis, Fachhochschule Meißen 2021)

Klepczyński A and others, 'Złe traktowanie osób podejrzanych i zatrzymanych przez funkcjonariuszy Policji. Raport z badania ankietowego prowadzonego wśród adwokatów' (Helsinki Foundation for Human Rights 2018)

Koops B-J, 'The concept of function creep' (2021) 13 *Law, Innovation and Technology* 29

Kruse U and others, 'The de-escalating potential of body-worn cameras: Results from six German police departments' (2023) 88 *Journal of Criminal Justice* 1

Kupczyński J, 'Użytkowanie kamer nasobnych przez policję i inne służby w świetle bieżących polskich regulacji prawnych' (2023) 3 *Kwartalnik Krajowej Szkoły Sądownictwa i Prokuratury* 67

Landesbeauftragter für den Datenschutz und die Informationsfreiheit Baden-Württemberg, 'Datenverarbeitungen der Sicherheitsbehörden' (8 January 2024) <<https://www.baden-wuerttemberg.datenschutz.de/datenverarbeitungen-der-sicherheitsbehoerden/>> accessed 14 December 2024

Lum C and others, 'Body-worn cameras' effects on police officers and citizen behavior: A systematic review' (2020) 16 Campbell Systematic Reviews e1112

Najwyższa Izba Kontroli, 'Przygotowanie wybranych podmiotów do realizacji zadań na rzecz zapewnienia porządku publicznego z wykorzystaniem środków przymusu bezpośredniego' (Information on audit results, 14 July 2022, No KPB.430.002.2022, ref no 14/2022/P/21/040/KPB, Warsaw 2022) 58 <<https://www.nik.gov.pl/plik/id,26195.vp,28975.pdf>> accessed 27 September 2024

Michaels R, 'The Functional Method of Comparative Law', in Mathias Reimann, and Reinhard Zimmermann (eds) *The Oxford Handbook of Comparative Law* (Oxford Academic 2012)

Müller M, 'Bodycam: Eine Erfolgsgeschichte Nimmt Ihren Lauf' (2016) 65 Deutsche Polizei. Zeitschrift Der Gewerkschaft Der Polizei 14

Neumann S, 'Einsatz der Bodycam in Wohnungen. Der lange Weg – ein Kommentar' (2024) 7 DP - Deutsche Polizei Schleswig-Holstein 1 <<https://www.gdp.de/Schleswig-Holstein/DP/2024/DP-7-2024.pdf>> accessed 14 August 2024

Parliamentary Committee on Administration and Internal Affairs, Record of Meeting (24 January 2018), <<https://orka.sejm.gov.pl/zapisy8.nsf/0/0F1A8B1F3E0935E3C-125822C00525115/%24File/0276608.pdf>> accessed 27 September 2024

Parliamentary Committee on Administration and Internal Affairs, Record of Meeting (21 July 2022) <<https://orka.sejm.gov.pl/zapisy9.nsf/0/412704D5F1CCD-335C125888E002E20D3/%24File/0289809.pdf>> accessed 30 September 2024

Parliamentary Committee on Administration and Internal Affairs, Record of Meeting (26 October 2022) <<https://orka.sejm.gov.pl/zapisy9.nsf/0/663FD39E55DD40ED-C12588EE003704A5/%24File/0051809.pdf>> accessed 28 September 2024

Rojek-Socha P, 'Kamery w policji sprawdzają się – będzie ich więcej' (Prawo.pl, 15 July 2019) <<https://www.prawo.pl/prawnicy-sady/kiedy-policjanci-moga-nagrywac-interwencje,445099.html>> accessed 28 September 2024

Stuttman M, Polizei- und Ordnungsrecht (Alpmann Schmidt 2023) 2

U.S. Department of Justice, 'Justice Department Awards over \$23 million in Funding for Body Worn Camera Pilot Program to Support Law Enforcement Agencies in 32 States' (21 September 2015) <<https://www.justice.gov/opa/pr/justice-department-awards-over-23-million-funding-body-worn-camera-pilot-program-support-law>> accessed 20 January 2025

Wasiak R, 'Kryminalistyczno – prawna problematyka wprowadzenia do użytku nabsobnych kamer video w Policji' (unpublished PhD thesis, University of Warsaw 2019)

Weber S, 'Polizei soll Bodycams auch in Wohnungen nutzen dürfen' (mittelhessen.de, 6 February 2024) <<https://www.mittelhessen.de/politik/politik-rheinland-pfalz/>>

[polizei-soll-bodycams-auch-in-wohnungen-nutzen-duerfen-3288314](#)> accessed 10 August 2024

Webster W, Miranda D and Leleux Ch, 'Evidence Review into Public Experience and Confidence of Body Worn Video in a Policing Context' (Scottish Institute for Policing Research 2022) <<https://dspace.stir.ac.uk/bitstream/1893/34460/1/UoS%20BWV%20Final%20June%202022.pdf>> accessed 18 December 2024

Zięba Sz, 'Kamera osobista dla policjanta. Każda interwencja będzie nagrana' (Trojmiasto.pl, 30 September 2019) <<https://www.trojmiasto.pl/wiadomosci/Kamera-osobista-dla-policjanta-Kazda-interwencja-bedzie-nagrana-n138358.html>> accessed 18 December 2024

### **Polish statutory laws**

Act on the protection of personal data processed in connection with preventing and combating crime of 14 December 2018 [2023] JoT [Journal of Laws] 1206

Police Act of 6 April 1990 [2025] JoL [Journal of Laws] 636

Communal Guards Act of 29 August 1997 [2021] JoT [Journal of Laws] 1763

Border Guard Act of 12 October 1990 [2024] JoT [Journal of Laws] 915

### **German statutory laws**

2006 General Law on the protection of public security and order in Berlin (Allgemeines Gesetz zum Schutz der öffentlichen Sicherheit und Ordnung in Berlin) (FRG)

1992 General Administrative Law for Schleswig-Holstein (Allgemeines Verwaltungsgesetz für das Land Schleswig-Holstein) (FRG)

1994 Federal Police Act (Bundespolizeigesetz) (FRG)

2017 Federal Criminal Bureau Act (Gesetz über das Bundeskriminalamt und die Zusammenarbeit des Bundes und der Länder in kriminalpolizeilichen Angelegenheiten) [BGBl I 1354] (FRG)

1990 Bavarian Police Tasks Act (Gesetz über die Aufgaben und Befugnisse der Bayerischen Polizei) (FRG)

1949 Basic Law for the Federal Republic of Germany (Grundgesetz für die Bundesrepublik Deutschland) (FRG)

2005 Hessian Public Security and Order Act (Hessisches Gesetz über die öffentliche Sicherheit und Ordnung) (FRG)

2005 Lower Saxony Police and Public Order Authorities Act (Niedersächsisches Polizei- und Ordnungsbehördengesetz) (FRG)

1993 Police and Public Order Authorities Act (Polizei- und Ordnungsbehördengesetz) (FRG)

2020 Police Act (Polizeigesetz) (FRG)

2019 Saxon Police Authorities Act (Sächsisches Polizeibehördengesetz) (FRG)

1992 Thuringian Police Tasks Act (Thüringer Gesetz über die Aufgaben und Befugnisse der Polizei) (FRG)

### **Legal acts of the European Union**

Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA[2016] OJ L119/89

Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 on establishing harmonized rules for artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144, and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) [2024] OJ L

### **Court rulings**

*Elfes* (1957) 6, 32 (Bundesverfassungsgericht)

### **Conferation speeches**

Jędrzej Kupczyński, ‘Research based evaluation of body-worn camera (BWC) footage as evidence in criminal proceedings. Preliminary findings’ (EUROCRIM 2024 – 24th Annual Conference of the European Society of Criminology, Bucharest, 13 September 2024)