



The influence exerted on journalists' activity by Internal Security Agency officers – *de lege lata* and *de lege ferenda* regulations (Poland, 2014)

Art. 153b of the 2002 Act [1] and Art. 197 of the 2013 Bill [2] penalize the use by the officers of the information acquired either while fulfilling or in connection with their duties for the purpose of affecting the operation of public authority bodies, entrepreneurs or broadcasters (within the meaning of the Act on Radio and Television Broadcasting) [3], chief editors, **journalists** and persons conducting publishing activity. An Internal Security Agency officer who commits such a deed in contravention of the provisions of the Act is liable to imprisonment for the term between 6 months and 8 years. However, if he or she acts with a view to receiving a personal or material benefit, they are liable to imprisonment for the term between 2 and 12 years. As regards the understanding of the term “**journalist**”, the legislator refers the reader to the Act on Press Law [4], which defines the journalist as a person who edits, creates and prepares press materials, and who remains in an employment relationship with the editorial board, or who engages in such activity on behalf of and with the authorization of the editorial board.

Art. 197 of the 2013 Bill does not only differ from the former regulation in respect of the way it is edited, for the said Bill carries “its own definition” of a journalist (Art 26, Section 1, Paragraph 9 of the Bill): a person who edits and prepares press materials, and who remains in an employment relationship with the editorial board (a unit governing the preparation process, that is gathering, evaluation and development of the materials to be published in the press), or who engages in such activity on behalf of and with the authorization of the editorial board, on the basis of a contract for specific work or a contract of mandate.

Given the above-mentioned legal solution, many questions arise as for its application. The solutions included in the 2013 Bill will give rise to a problem concerned with persons who are not on an employment contract, either for specific work or of mandate, since they are, e.g. student interns or trainees, which – given the Polish reality – is a standard practice rather than an isolated case. This means that in the case of a student who writes a current affairs commentary for an editorial board, and this commentary is later on published without any contract being signed, but the text contents having been affected by an officer, the person's action cannot be penalized.

Some other issues that ought to be connected with the deed defined in Art. 153b (of the 2002 Act) and Art. 197 (of the 2013 Bill) are: (1) What intent will be taken into consideration (a direct intent)?; (2) Will the character taken into account be of material or formal nature?; (3) How in practice will it be possible to point to the feature of a prohibited act in the form of “the use of information to exert influence” on e.g. a journalist? Besides, it is essential to maintain a broad sense of information that an officer obtained while fulfilling or in connection with his official duties.

As for the above-invoked crime, it is worth mentioning its main elements: (1) the subject of a crime (an Internal Security Agency/Foreign Intelligence Agency officer); (2) the objective aspect (the use of information obtained while fulfilling or in connection with official duties to influence individuals); (3) the object of the crime (the good that must be protected for the sake of the reason of the State – information itself, that is information security, but also the individuals mentioned in the article: inter alia, journalists).

As regards the definition of the crime subject, we shall say that in Article 153b (of the 2002 Act) and in Article 197 (of the 2013 Bill) the subject is defined individually (an individual crime). In the case when the kind of intent is defined, it must be pointed out that in a case like this we are dealing with a direct intent (an officer wants to commit a prohibited act, which means that he is aware of it and is willing to accomplish it). The crime defined above is of material character, so there must be an effect in the form of an exertion of influence. In the case of a journalist this effect will take the form of an acceptance of the press material as fit for being published as a press article. It is also

worth mentioning Art 128, Clause 3 of the Penal Code, which defines the crime as an exertion of influence on „official activities of a constitutional authority of the Republic of Poland” – here the scope of activities has been partially defined though. However, in the case of Art. 153b (of the 2002 Act) and Art. 197 (of the 2013 Bill), the influence scope is quite broad, given the use of the expression of the “influence on activity”, inter alia, of the public authority body, **journalists**. In the case of journalists it would be advisable to consider the quite narrow notion of activity, that is the actions of editing, creating and preparing press materials.

Art. 135c of the 2002 Act and accordingly Art 198 of the 2013 Bill penalize the use by a former Internal Security Agency and/or Office for State Protection (a predecessor of ABW and AW) of the information gathered while fulfilling or in connection with official duties for the purpose of affecting the operation of public authority bodies, entrepreneurs or broadcasters, editors-in-chief, **journalists** and persons conducting publishing activity. Any person engaging in such an act will be liable to imprisonment for the term between 6 months and 8 years, whereas if they act with a view to receiving a personal or material benefit, they will be liable to imprisonment for the term between 2 and 12 years.

As for Article 153c of the 2002 Act and Art. 198 of the 2013 Bill, it is necessary to point out the same doubts which were raised in relation to Art 153b of the 2002 Act and Art 197 of the 2013 Bill. Besides, one should draw attention to the Polish legislator’s inconsistency, since while defining ‘the former officer’, the legislator refers to the officers of the Office for State Protection and of the Internal Security Agency, whereas he does not refer to former officers of the Security Service (a main security organization in the People’s Republic of Poland). There might emerge a hypothetical situation concerned with possession of “valuable” information, e.g. information about the intelligence agent network under operation or another form of services cooperation which might be continued in the Third Republic of Poland (this only serves as an example of a possible situation, however more cases might be invoked).



References

- [1] Act of 24 May 2002 on the Internal Security Agency and Foreign Intelligence Agency (Dz.U. 2002 nr 74 poz. 676 ze zm.).
- [2] Bill of the Internal Security Agency of 1 August 2013 [abbreviated as 2013 Bill].
- [3] Act of 29 December 1992 on Radio and Television Broadcasting (Dz.U. 1993 nr 7 poz. 34 ze zm.).
- [4] Act of 26 January 1984 – Press Law (Dz.U. 1984 nr 5 poz. 24 ze zm.).