



## **Opinion on the proposed reform of the secret services in Poland - the Bill on the Internal Security Agency's (2013)**

### **Context of the changes in the law concerning the operation of the Internal Security Agency**

The official cause of changes in the regulations on the functioning and structure of the Internal Security Agency (Polish ABW) is the "Amber Gold" scandal – however, this explanation should be regarded as odd since the data show that the service informed the authorities (including the Prime Minister Donald Tusk) about potential risks arising from the activities of the company (a kind of “pyramid” scheme). However, the ISA was accused for lack of preventive measures and information – this fact should be considered as seeking a "scapegoat" and an excuse for the failure to act by other state bodies, including the executive body (the Council of Ministers and the Prime Minister), the more that with the “Amber Gold” and belonging to the company airline was associated the son of Prime Minister (in the media). The case of “Amber Gold” affected negatively the image of the Prime Minister as well as his truthfulness of the information provided by the ISA. Another important issue which could affect the decision of the Government concerning the direction of work on the changes in the regulation on the Internal Security Agency is the issue of J.K. Bielecki (one of the advisers to D. Tusk), who was accused by one of the magazines of lobbying for the Russian company Acron, which was to apply to take over the strategic Polish company Azoty Group. According to the magazines that information was provided to the Prime Minister by the head of the Internal Security Agency. The ISA denied the existence of such a report. [1]

Therefore, it must be concluded that the reform of the ISA is an attempt to shift the responsibility for the supervision of another central administration office from the Prime Minister. This type of action should be associated with a desire to facilitate the decision-making process in connection with such possible "excesses" of services which would influence the

political responsibility for the supervision of these services. It is also possible to have an impression that the changes concerning the ISA are an attempt to “pacify” the service, which, in the view of a change of the future government coalitions would be a tool of political struggle and also treated as a subject of “political spoils”. That pacification, among others, is to be expressed by: (1) elimination of the criminal investigation department for the analytic function of ISA, (2) an increasing of criminal responsibility of officers of the Internal Security Agency for providing information to journalists (although there is no specification of the kind of information), (3) blurring the political responsibility for the direct supervision of the Prime Minister over the Internal Security Agency.

In the public discourse attention is also drawn to the lack of control over data acquisition on citizens. In 2011 there was an increase of over 1,000 applications for operational control. It should be noted that quantitative data on the use of wiretaps concern the so-called “lawsuit” cases, i.e. such cases in which the acquired material can be used as an evidence (use for law enforcement and crime prevention). In addition to the so-called “phone tapping” there are used billing statements of phone calls and text messages. The European Commission in its report of 2011 (on the evaluation of the Directive on the retention of data, i.e. the retention directive) indicated that Poland dominated the statistics of applications for access to data on “traffic”. [2]

According to the information provided to the European Commission by 14 Member States, Poland had 51% share of all applications for retention of the data in 2009. For comparison, French share was 25%, the Czech Republic 13.6%, Lithuania 3.5%, Spain 3.4%. The situation of a large number of applications in the case of Polish only partly can be explained by the need to send applications by competent authorities to each of the mobile operators individually. [3]

It should be noted that in Poland there are 11 institutions which are entitled to eavesdrop on citizens, which is unique not only in Europe. This fact may also prove the expansion of control power by the authorities, who are trying to compensate for the inefficiency of state structures and different institutions by distribution of particular kind of powers. The problem is that the distribution of these special powers intervenes widely in the realm of civil rights. In addition, the Polish foundation “Panopticon” points out that the existing legislation on data sharing of telecommunication connections are used to “circumvent” the regulations on professional secrecy – especially the reporters’ privilege. [4]



The supervision formula should be considered absurd. It is based on a new institution called the State Security Committee, which, by the very name refers to the inglorious tradition of the French Revolution – that is the “Committee of Public Safety” (French: Comité de Surete générale). Also in the context of the history of the Eastern Bloc countries there should mention the tradition of the State Security Committee (KGB - Russian: КОМИТЕТ ГОСУДАРСТВЕННОЙ БЕЗОПАСНОСТИ), as far as the naming terminology is concerned. Maybe the lack of insight into the historical contexts is due to employment in the office of the Ministry of Internal Affairs 20-year-olds as advisers? According to the bill in this Committee are to sit only Ministers not under the chairmanship of the Prime Minister but the head of the Prime Minister’s Office. This solution is absurd, as the supervisory functions concerning the operations of the central government bodies are assigned, for some unknown reason, to the head of the Prime Minister’s Office. The constitutionality of such a solution should be consider here. However, this provision is part of the logic of the activities of the political team of the ruling Platforma Obywatelska (Civic Platform) party and its leader (also the Prime Minister) Donald Tusk. This logic is based on shifting any political responsibility off the Prime Minister for any potential accusations for improper functioning of the state administration – it resembles the policy of “good tsar and a bad official”. The collective responsibility of the “supervisory body” in the context of the functioning of the State Security Committee is to give the illusion of greater transparency, however, only superficially. The effect will only be ceding responsibilities to lower levels of administrative structure. It should also be mentioned that the Committee will be appointed by a decree of the Prime Minister, which means that its legal status will be weaker. All these factors indicate that the proposed changes are not to increase the efficiency of the service, but to make only the institutional reshuffle of certain people. In addition, there is to be established another “collegial body” called Special Services Control Committee, which refers to the tradition of supervision in the American system. Its members are to be among others Judges. This Commission within its activities is to include control over obtaining data on citizens (e.g. “billing statements”, “tapping”, etc.). In 2013 the proposition concerning this institution was not clearly determined by people working on changing regulations. The Commission will have a “political” character anyway, as it is to be elected by the Parliament, thus the control value of this “body” over the service is at least questionable.

The problem of supervision over the Internal Security Agency should be concern other services, since the announced changes assume that the ISA will be directed by the head of the Ministry of Internal Affairs. It is not known why the ISA is to be subjected to the head of the Ministry of Internal Affairs and the Intelligence Agency and the Central Anticorruption Bureau are directly responsible to the Prime Minister. Maybe the Prime Minister and the group of his political advisers choose the services which “it is easier to boast on” in the media (as in the case of CAB) or they prefer to engage in services, whose activities within the state are barely visible (as in the case of IA). A logical solution would be to introduce supervision by the Prime Minister over all services, and if not, then at least just over ISA, which is the largest Polish secret service.

All possible changes which would specify the activities of the Internal Security Agency should be regarded positive. Currently, this service is engaged in “everything and nothing”, and if someone deals with too many things, then any matter cannot be dealt with well – this regularity applies to the current situation of the ISA. However, the plans for changes in the law provide for a reduction of investigative actions, which seems a little absurd. At this point one can see the likely influence of ministers B. Sienkiewicz (a graduate of Philosophy and History Department) and J. Cichocki (a sociologist) who have worked for the Centre for Eastern Studies (CES), which is often in Polish media referred as an institution dealing with “open-source intelligence” in the area of Eastern Europe (including Russia). On the other hand, attention should be paid to the weak position of ISA in relation to the Central Bureau of Investigation (CBI), which has a better personnel in investigative work. This results from the nature of functioning of these two different structures, but also from weak training and recruiting cycle in terms of ISA. The media claimed that due to this change, employees of ISA will be “seconded” to work with other departments – CBI and CAB. This idea is absurd, since the specifics of the position of at least CBI is different, and the competence of employees of ISA in the area of investigation is minimal. There also remains the problem of closing investigations and transferring ISA agents by staff seconded to the CBI and CAB.

The attempt to “pacify” the greatest service, so that it was not dangerous when attempted to be used for political games, or that it was of little value to verify the activities of politicians, is expressed in the regulations relating to providing information by its employees. The bill on ISA assumes that its boss will not be able to disclose information relating to operational and reconnaissance activities even to the Prime Minister and President, which is an absurd solution, since the most important individuals in the country will not have the information needed to

decide in the field of national security (i.e. they will not be able to verify their validity). This solution can be interpreted as a desire to avoid cases such as the “Amber Gold” affair.



Another regulation limiting the operations of ISA is to increase the criminal liability for providing information to the media, however, the type of information has not been specified, that this, this prohibition applies not only to the so-called “clausal information”. Vague are also the solutions to ban recruitment of journalists by ISA – the possibility of circumventing the ban rises doubts here.

## Evaluation

In fact, the biggest problem of Polish secret services (including ISA) is their lack of specialization. Despite determining their activities, under the current law, the ISA deals with “everything and nothing”, which means that from the beginning of its existence (before as OSP – Office of State Protection, Polish: UOP – Urząd Ochrony Państwa) for the following years this secret service did not determine any area of its activities. Changes prepared for 2015 provide for the limitation of the field of interest of ISA, which in this case should be viewed positively. Limitation of the right of inquiry of this service should be judged negatively, however, in this respect this service is not effective anyway.

An important problem is the politicization of the secret services, which is associated with a particular “human resources policy”, which often has not been based on competence but on the “political acquaintances”. The same concerns promotion to higher positions in Polish secret services. This problem will not be solved by the new proposals, since it is a “structural problem” and “the problem of political culture and public life”.

The issue of efficiency of ISA also involves a weak training and recruiting process, which is the outcome of instrumental treatment of the uniformed services and secret services. There are known cases of getting an officer rank after a few days of training, which is a parody of the training cycle and does not raise any ethos within the secret services. This process should be regarded as threatening to national security, since there is nothing more undermining the state as an incompetent employee of services responsible for security. [6] These questions also cannot be solved by the proposed legislative changes, as they result from the above-mentioned “structural” and “political culture” problems.

## Notes

[1] cf. *Lobbing na rzecz Rosjan? Bielecki odpiera ataki, a PiS chce komisji śledczej*, (Lobbying for the Russians? Bielecki defends, and PiS want Commission of Inquiry), in:

<http://wiadomosci.dziennik.pl/polityka/artykuly/427439,lobbing-na-rzecz-rosjan-bielecki-odpiera-ataki-a-pis-chce-komisji-sledczej.html>, (18.08.2013).

[2] Report from the Commission to the Council and European Parliament, “Evaluation report on the Data Retention Directive” (Directive 2006/24/WE), Brussels 18.04.2011, COM (2011).

[3] Calculation based on data from the European Commission. Percentages are given with an accuracy of one decimal.

[4] *Ile razy państwo sięgało po nasze dane telekomunikacyjne w 2011 roku?* (How many times have the state reached of our telecommunications data in 2011?), in: (www.panoptykon.org)

<http://panoptykon.org/wiadomosc/ile-razy-panstwo-siegalo-po-nasze-dane-telekomunikacyjne-w-2011-roku-publikujemy-najnowsze>, (03.04.2012).

[5] Bill on Internal Security Agency, August 1, 2013.

[6] There have been cases that the Government Protection Bureau officer was appointed after 11 days, the Military Counterintelligence Service – after 17 days, ISA – after 1 month. Information after: A. Kublik, W. Czuchnowski, *Naprawdę szybki kurs*, Gazeta Wyborcza, in:

<http://wyborcza.pl/1,76842,5153699.html>, (16.08.2013).