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FOR Communication 11/2023:

Investigating alleged Russian influence is a cover up for pre-election show on state television

Synthesis:

- By the votes of the ruling coalition, the Sejm passed the Act on the establishment of the State Commission for the Study of Russian Influence on the Internal Security of the Republic of Poland in years 2007–2022.
- **Any person, including journalists and members of NGOs, can be subpoenaed, and punished without a court ruling** for actions that were not criminal offenses under the law at the time they were committed - and therefore not a crime. This constitutes a violation of the principle of non-retroactivity of the law, expressed in Art. 42 sec. 1 of the Constitution.
- The functioning of the Commission in this scandalous form violates the separation of powers and is clearly unconstitutional. The Commission can deny **any person** from holding public office for 10 years without a court verdict, **which is a serious threat to democracy and civil society**.
- The "countermeasures" that the commission will be able to enforce are in fact camouflaged punitive measures that can only be applied by the courts. Members of the commission, elected by the Sejm, will be given **extensive investigative and judicial powers, vested in the special services, prosecutors' office and courts**.
- Selection criteria for candidates for commission members allow for the selection of people who do not have the knowledge or education necessary for this type of service. The election of active politicians is most likely. Moreover, the act does not exclude the possibility of electing a member, who received a negative opinion from ABW, so **there are indications that he may be involved in the activities of a foreign intelligence service**. [These provisions have been amended in the final version of the Act]

- The chairman of the Commission will have the right to order, among others, searches and the Commission will have access to classified information, trade secrets and attorney-client privilege. The body, completely subordinated to PiS politicians, will have the right to revoke security clearances issued by special services, thus eliminating the punished persons from holding many important public positions.

The Sejm, by the votes of the ruling coalition and the Polskie Sprawy and Kukiz'15 parliament groups, passed the [Act on the establishment of the State Commission for the Study of Russian Influences on the Internal Security of the Republic of Poland in the years 2007-2022](#). The Commission is proposed to be a public administration body and will be tasked with disclosing alleged cases of widely understood acts of espionage or actions made to the detriment of the Republic of Poland committed by public officials under the influence of Russia. **The act was sent to the Senate, which within 30 days will decide whether to accept the act, reject it in its entirety or propose amendments. [As of 29th of May, the Act has been signed by the President, and sent to the politicized Constitutional Tribunal]**

The Commission is entitled to investigate cases of public officials who "under Russian influence" acted to the detriment of the interests of the Republic of Poland, among others by:

- disclosure of information to unauthorized persons;
- issuing or influencing the content of administrative decisions;
- taking part in negotiations;
- undertaking decisions on hiring employees or selecting contractors as part of the activities of a public authority or company;
- managing public funds;
- representing Poland on the international forum.

Anyone can be targeted by the authorities

Article 4 sec. 2 of the Act **allows for the prosecution** of not only state officials, but also of **any person** whose actions allegedly undermined the undefined "interest of the Republic of Poland" in the field of very broadly understood influence on public life. It will also be possible to apply "countermeasures", which are in fact camouflaged penal measures, normally included in the Penal Code, which can only be applied by the courts. **Politicians, journalists, members of non-governmental organizations or bloggers who are problematic for the current government can be punished for "influencing the mass media"**.

Countermeasures which are penalties

If the Commission finds "actions to the detriment of the Republic of Poland under Russian influence", it may impose a penalty or punitive measure, euphemistically called countermeasures, in the form of:

- withdrawal of security clearance for a period of up to 10 years - which is the competence of the Internal Security Agency (ABW) and the Military Counterintelligence Service (SKW);
- imposing a ban on performing functions related to the management of public funds for a period of 10 years (in practice it's a ban on performing public functions) - which is the competence of the courts or the State Tribunal;
- revoking or prohibiting the possession of a firearms license for a period of 10 years – which is the competence of the Voivodeship Police Commanders.

The Commission will have the right to request the disclosure of classified information, including from courts, prosecutors' offices and secret services, as well as company secrets, operational materials or files of preliminary and court proceedings. Members of the commission will also have the right to enter the premises where the above-mentioned materials are located, and the chairman will have a right to order searches of any premises.

The Polish state already has appropriate institutions tasked with investigating and combating the influence of foreign intelligence services as well as prosecuting and punishing crimes contained in Chapter XVII of the Penal Code, for example espionage and treason. The establishment of a political body duplicating the tasks of law enforcement and judicial authorities brings to mind bad pre-war models. "Countermeasures" imposed by an administrative decision replace penalties, just like 80 years ago, administrative decisions to send to a "place of detention" in Bereza Kartuska replaced court sentences

for political opponents. **Any person could be punished by the commission for actions that were not prohibited under the threat of punishment by the law in force at the time they were committed - and therefore were not a crime.** This constitutes a breach of the principle of non-retroactivity expressed in Art. 42 sec. 1 of the Constitution.

Imposing penalties or punitive measures without a court verdict and depriving anyone of the ability to hold public office is a very serious threat to democracy.

Candidates without the necessary competences

Members of the Commission will be appointed and dismissed by the Sejm. The draft in question does not specify any real qualifications that candidates for commission members must hold, apart from the requirement of "higher education or necessary knowledge in the field of functioning of public authorities". Thus, the candidate does not even need to have a university diploma. **Moreover, Art. 9 sec. 5 of the draft specifies that if the ABW issues a negative opinion of a candidate on the security clearance, the parliamentary club may propose another candidate for a member of the commission, but it does not have to do so. It is therefore possible to appoint as a member of the commission a person with respect to whom are serious indications that he or she is, for example, a Russian agent. [These provisions have been amended in the final version of the Act]**

Similar criteria and the method of selecting members were used when appointing the so-called the reprivatization commission. Its members were MPs, so it can be presumed that the same will be true for the commission "fighting" Russian influence.

Powers

The authors of the Act took special care of the attendance of witnesses. Failure to appear or "unjustified refusal to testify" will be punished by fines of 20,000 PLN, and in the event of repeated failure to attend - 50,000 PLN. **The act gives the commission the tools to request the police to bring a summoned person before the commission by force.**

The body, completely subordinated to the politicians of the ruling coalition, will have the right to revoke security clearances issued by professional secret services, thus preventing the punished persons from holding the most important positions in the state. The Internal Security Agency (ABW) and the Military

Counterintelligence Service (SKW) have special units dealing with issuing security clearances for access to classified information and have legal and technical capabilities to conduct verification proceedings. The act in question provides that members of the commission, who do not have the appropriate competences and do not have any capabilities or resources necessary to issue such decisions, will be able to challenge the decisions of the ABW and SKW made after appropriate security clearance procedures have been carried out.

Attorney-client privilege, notary's, journalist's, and even medical confidentiality are at risk, because the commission will be able, after the approval of the District Court in Warsaw, to question witnesses regarding the circumstances covered by the above-mentioned privileges **if the commission considers that it is excessively difficult to determine some circumstances in a different way**. This means that the criteria are less restrictive than in the case of criminal proceedings. In the rare cases of exemption from professional secrecy by a court under Art. 180 § 2 of the Code of Criminal Procedure, **such exemption may be granted only in the case of complete impossibility to establish the examined circumstances in any other way**. Only the security of the confidentiality of confession was taken care of, from which the commission cannot waive in any way.

Pre-election show

It is impossible not to associate the establishment of the Commission with the upcoming elections. It is easy to imagine **a show broadcasted on state television, during which opposition politicians will be accused of espionage or high treason**. Failure to appear when summoned will result in the imposition of high fines and even being brought forcibly by the police. The leader of the Civic Coalition, Donald Tusk, is mentioned directly in the justification to the draft in the context of the "reset" policy allegedly pursued by Poland in relations with Russia before 2015. In the justification for the project we can read: ["The signing of a gas contract with Gazprom in 2010 by Waldemar Pawlak has already grown to the rank of a symbol of the "reset". Therefore, there can be no doubt that the creation of the Commission is fully justified."](#) The author of the act does not even try to hide the political motivation behind the establishment of the Commission.

The Commission will be able to influence public opinion by simply summoning and questioning, even without imposing any of the "countermeasures", by sticking the label of a Russian agent on any person

- including former and current opposition party leaders. A few months before the elections, in a situation of a real Russian aggression against Ukraine, **this may significantly affect the outcome of the parliamentary elections.**

Russian influence

The Act's entry into force will be a real proof of the influence of Russian standards on Polish public life. The motives behind the creation of the commission, violation of the provisions of the Constitution, the method of selecting its members and far-reaching powers confirm that this body itself is modeled on solutions known from the East, which it allegedly would identify and fight.

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FOR was founded in 2007 by prof. Leszek Balcerowicz in order to effectively protect freedom and promote truth and common sense in the public discourse. Our goal is to change the awareness of Polish people and existing and planned law in direction of freedom.

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