

[PL] Act on Disclosing Documents of the State Security Service

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On 15 March 2007 the Act on the disclosure of the documents of the State Security Service from the period of 1944-1990 and the content of those documents (so-called "Vetting" or "Lustration" Act) came into force.

The Act aims at regulating a complex, difficult, sensitive and not yet fully resolved issue of dealing with people who had collaborated with the Communist regime. The content of the Act has triggered a nationwide political discussion. Moreover, the Act (and its subsequent amendment in 2007) contains a number of provisions that had evoked serious legal doubts concerning e.g. the violation of human rights and fundamental freedoms. These doubts also concerned media-related issues and, in this respect, the Commissioner for Civil Rights Protection and the Democratic Left Alliance (SLD) appealed to the Constitutional Tribunal to check the Act's conformity with the Polish Constitution.

According to the provisions of the Act, all individuals born before 1 August 1972 (Art. 7.1) who hold so-called "public functions" are subject to lustration; individuals specified in Art. 4 of the Act are obliged to declare whether they had collaborated with the state security apparatus in the above-mentioned period. The Act specifies a broad list of categories of persons to be subject to lustration. This specification is based *inter alia* on the criterion of occupation; it also includes the journalist profession (Art. 4.1 item 52).

A problem of great importance is the definition of the "journalist", which is to be understood as that stated in the Press Law of 1984. The Commissioner for Civil Rights Protection stressed that such a use of the term is not appropriate as the definition "has been taken from a different legal context and is very wide". Regardless of the fact that the Law was changed several times since 1989, the majority of its provisions, including basic definitions, have remained unchanged; such definitions refer to press and audiovisual media of all types.

According to Art. 7 item 5 of the Press Law, a journalist is a person who fulfils the following conditions jointly:

1) "edits, creates or prepares press materials": this wide definition covers those individuals who gather, collect, disseminate (publish, broadcast) and present information, irrespective of the given media (press, audiovisual). Depending on

the context, the term includes various types of editors (e.g. editor-in-chief) and also may include 'visual media' journalists, such as photographers, graphic-artists, etc.; and

2) is contractually employed by the newspaper, TV station, etc. or acts as a journalist on behalf of, and for, such an institution. This very wide definition may cover in some situations even all individuals engaged in various ways in journalistic work by a media company - a newspaper, TV station etc., e.g. freelancers, scientists or other occasional authors.

Taking into consideration the above-mentioned conditions, it is difficult to unequivocally determine who, by definition, is to be considered a journalist and hence how many people should be subject to lustration. Such a determination will most likely need to be made by editors-in-chief or other respective managers. The lustration procedure will by no means be short. Additionally, there exist doubts as to whether there are sufficient organisational and legal means/conditions to complete the lustration process in a reasonable time and in accordance with proper legal procedures.

A 'lustration lie' or not submitting a declaration in time (according to the provisions of the Act (art. 56.1 and 21e), the deadline for submission of the declaration is 15 May 2007) will result in a ban from holding a "public function" for 10 years. With regard to the journalist profession, this results in a ban from publishing/broadcasting, which in turn may be considered as an infringement of freedom of speech (Art. 14 of the Constitution of the Republic of Poland).

On 11 May 2007, the Constitutional Tribunal issued a judgement (no. K2 /07) as regards the complaint of the SLD (the complaint of the Commissioner has not been considered yet). The Tribunal decided that some of the Act's provisions did not conform to the Polish Constitution. The Tribunal found that the catalogue of persons subject to lustration was too broad, mainly because a significant part of categories were not "public functions" (including journalists and editors). The Tribunal further found an inconsistency of Art. 4, point 52 ("journalists") and Art. 8, point 20 and 49 ("editors") of the Act with the Constitution as well as with Arts. 8 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

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Act on the disclosure of the documents of the State Security Service from the period of 1944-1990 and the content of those documents (so-called "Vetting" or "Lustration" Act) of 18 October 2006

