

## **Commentary on the planned work on the act “against the Big Brother” presented by the Minister of Internal Affairs B. Sienkiewicz (Poland, 2013)**

In 2013 the Minister of Internal Affairs B. Sienkiewicz announced work on the bill “against the Big Brother”. The announcement of B. Sienkiewicz of the act regulating among others the principles of operation of video surveillance was soon after he took his ministerial position.

Currently Minister B. Sienkiewicz decided to combine the issue of video surveillance with the issue of ICT data collection and using technical measures by the police and secret service. It should be noted that despite similar issues (protection of privacy), the combination of these two issues in one legislative process does not seem reasonable. The issue of video surveillance relates mainly to private entities – i.e. workplaces, housing communities and associations, shops, banks, schools, hotels, etc. However, the problem of ICT data collection and using certain techniques concerns the police and secret service, which are subject to the Prime Minister and Minister of Internal Affairs. Hence it is surprising to deal with all matters concerning the issue of “privacy”; one would rather expect that the representatives of the executive branch would respond dynamically to the remarks provided by the institutions which indicate the problems associated with civil rights violations [See: *The context of the announced changes*, in the text below]. The issue of ICT data collection and storing as well as the issue of the use of certain techniques by the Polish police and secret services was addressed by the Ombudsman (2011), the Supreme Chamber of Control (2012/2013), and the General Inspectorate for Personal Data Protection.

It should be expected that the combination of these two issues will lengthen the legislative process, it can also distract attention from more serious issues, namely the actual control and solutions used by the Polish secret services for data collection using the “tapping” and “billing statements”. It is not sufficient to solve this problem on the statutory level, since a large number of requests for operational controls (compared with other European countries) is due to

instrumental treatment of the provisions mentioned by the Ombudsman [See: *The context of the announced changes* in the text below]. Carelessness in the use of “tapping” and “billing statements” is also the result of poor training system for obtaining evidence from other sources (e.g., personal sources of information), which applies to both the police and Polish secret service.

## **Context of the announced changes and work on the issue of video surveillance and ICT data collection practices in Poland:**

On 29<sup>th</sup> June 2011 the Ombudsman requested to the Constitutional Court for a declaration of Art. 19 section 6 point 3 of the Police Act [1] (also the relevant provisions in the Act on Border Guard, fiscal control, Military Police, ISA – Internal Security Agency, IA –Intelligence Agency, CAB – Central Anticorruption Bureau, MCS – Military Counterintelligence Service, MIS – Military Intelligence Service) as inconsistent with the Constitution of the Republic of Poland.[2] The problem concerned the possible *use of technical means enabling to secretly obtain information and evidence as well as recording, and in particular the content of telephone conversations, with telecommunications network* (Article 19 section 6 point 3 of the Police Act). The main problem is the lack of precision of the regulation, which means that each particular service may use unspecified technical means (such as GPS navigation systems).

On 1<sup>st</sup> August 2011 Ombudsman put forward a further motion to the Constitutional Court, this time as it related to *the access of particular services to telecommunications data*. The motion of the Ombudsman to the Constitutional Court included, among others, verification of the non-compliance of Art. 20c section 1 of the Police Act [3] (including the relevant provisions in the Act on Border Guard, fiscal control, Military Police, Internal Security Agency, Intelligence Agency, Central Anticorruption Bureau, Military Counterintelligence Service, Military Intelligence Service) as inconsistent with the Constitution of the Republic of Poland). [4] This compatibility concerns the rights conferred by the Telecommunications Act in data acquisition in Art. 180c, Art. 180d. [5]

## Notes

[1] The Police Act of 6<sup>th</sup> April 1990 (Dz. U. z 2007r. Nr 43, poz. 277, as amended).

[2] The motion of the Ombudsman to Constitutional Court *on the use of technical means enabling to secretly obtain information and evidence and their recording by particular services under operational control* – 29<sup>th</sup> June 2011.

[3] The Police Act of 6<sup>th</sup> April 1990 (Dz. U. z 2007r. Nr 43, poz. 277, as amended).

[4] The motion of the Ombudsman to Constitutional Court *on the access to telecommunications data by particular services* – August 1<sup>st</sup> 2011.

[5] Act of 16<sup>th</sup> July 2004 Telecommunications Law (Dz. U. Nr 171, poz. 1800, as amended).