



HELSINKI COMMITTEE IN POLAND

MEMBER OF INTERNATIONAL HELSINKI FEDERATION
FOR HUMAN RIGHTS, VIENNA

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STATEMENT

In connection with the passing of the so-called Vetting Act (the Act of 21 July 2006 on the disclosure of information on documents of State security apparatus from the period between 1944 - 1990 and the contents of those documents) by the Sejm of the Republic of Poland, we feel an obligation to protest against some of its solutions, which violate human rights and the principle of the rule of law.

The Helsinki Committee wishes to remind all those concerned that as early as the beginning of the nineties it opted for vetting to be based on principles worthy of the legal state, which we repeatedly emphasized, most recently in the statement issued on 2 June 2006. The solutions adopted by the Polish Sejm are at variance with the above-mentioned principles.

1. As a result of the introduction of this Act, individuals who conducted activities in support of the democratic transformation and fell victim to the system will be treated in the same way as individuals suspected of cooperating with the security apparatus. Granting the same status to informers and those they informed on is discriminating against the latter and morally unjustified.

2. Individuals who disagree with the contents of the certificate issued by the Institute of National Remembrance (IPN) by virtue of the new Act, will be able to lodge an appeal in civil courts and initiate an inquiry to ascertain the truth. The IPN's assertion of the fact that someone cooperated with the security apparatus during the period of the Polish People's Republic (PRL) will in practice mean that that person will be deprived of the opportunity to serve many public functions, and will result in "civil death". Therefore, the verification of the authenticity of the certificates issued by the IPN, if these are upheld, must be performed before criminal courts and not civil ones, as the Act provides. This is because only criminal proceedings ensure the principle of presumed innocence, as well as a series of other trial guarantees protecting the rights and good name of the person unjustly publicly accused. In such an event the burden of proving that a given person cooperated with the security apparatus shall lie on the IPN. What cannot happen is that individuals questioning the authenticity of the documents preserved in the IPN archives are forced to prove their innocence, while only being allowed to have an inadequate knowledge of the archive resources and not being able to fully assess the significance of particular documents in comparison with the Institute of National Remembrance.

3. The disclosure of the contents of the files raises serious concerns. In the case of the victims (whose status must be maintained), as well as third parties, the disclosure of the files could ensue exclusively upon their consent.

4. The course which the IPN intends to follow in order to issue the certificates also gives rise to concern. The Act provides that the individuals it affects have to apply for the certificate within 3 months and have the right to receive it in principle within a year, under the sanction of losing the occupied public function. It is already obvious that from the organizational perspective IPN will be unable to manage this task. The passage of a law which the legislator knows in advance would be impossible to execute, and which will result in a mass violation of the rights of individuals, constitutes a clear breach of the principle of the citizen's confidence in the state as well as accurate legislation – the foundations of the state based upon the rule of law.

In connection with the above-mentioned shortcomings in the Act, which threaten the fundamental rights of an individual, we appeal for its just amendment, or its complete rejection and the preparation of a new draft act which would fully respect human rights.

Warsaw, 9 August 2006

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