

Response to an alert – published on the Council of Europe’s platform to promote the protection of journalism and safety of journalists – concerning the adoption by the Polish Parliament of amendments to the Law on Police and certain other laws

The Polish Constitution guarantees freedom of press and other mass media, while the protection of journalistic secrecy, including journalistic sources, is deeply rooted in the Polish legal system. For this reason, the Polish government attaches great importance to guaranteeing freedom of press and respect for journalistic secrecy that comes with it, both of which underpin the functioning of democratic states and the rule of law.

In this context we would like to emphasize that the adoption of the amended Law on Police and certain other laws stems from the necessity of implementing a Constitutional Court judgement dated 30 July 2014, in which the Court found a number of regulations concerning the functioning of police and national security services to be unconstitutional.

In particular, the provisions previously in force did not provide for due oversight of transfer of telecommunication data to security services. Furthermore, they did not guarantee an immediate destruction – before a commission and with a due record of the proceedings – of materials containing information that was inadmissible as evidence and for which the court did not lift professional secrecy or such lifting of secrecy was inadmissible. Nor did they include regulations on the destruction of data that are irrelevant to ongoing proceedings.

Thus, **the Law of 15 January 2016 rather restricts the existing competences of the law enforcement agencies or public security agencies than grants the new powers to them.**

Due to the amendments to the Law on Police, the existing capabilities of police and security agencies to collect data were curtailed. In light of the Constitutional Court judgement, the legislator’s principal aim in passing the law was to ensure more robust legal guarantees for protecting information that was obtained by the services. Such data may be covered by professional (including journalistic) secrecy.

What is more, the law introduces a uniform definition of telecommunication, post and internet data, and lays down detailed rules governing their collection, processing and destruction. Of key significance (especially to journalists) are the provisions of the amended law that introduce the obligation of the court’s prior scrutiny of materials that have originated from operational surveillance and include secrets related to the exercise of a profession or function (this also covers journalistic secrecy), as well as the requirement of an immediate destruction of materials which the court has deemed inadmissible in criminal proceedings. The collection of data related to individual persons has been placed under the court’s supervision, and was made subject to registration and reporting. It is therefore **unjustified to claim that the amendment “compromises the protection of journalists’ sources and it is an obvious deterrent to whistleblowers.”**

Until now, the above mentioned restrictions have not applied to police or special forces, hence the scope of their freedom to act, also in relation to journalists, was broader than under the new legal regime, introduced by the law of 15 January 2016.

In comparison to the situation prior to the adoption, the new law reinforces the protection of journalistic secrecy. It is therefore surprising that the alert’s signatories raised no doubts about the content of the previous regulations.