

Bill at a glance: SNOOPERS' CHARTER

A Surveillance Act, a set of amendments of the Law on Police and other bills regulating a role and capacity of the services in Poland came into force on 6 February 2016. The changes became law only thanks to the votes of Law and Justice's Party's members of the parliament and even with their 'silent coalition' Kukiz'15 voting against it. The project was criticised by all the organisations asked to issue an opinion on the subject: the Bureau of Research at the Chancellery of the Parliament, Polish Commissioner of Human Rights, The Inspector General for the Protection of Personal Data, National Council of the Judiciary of Poland.

It is not the first time when Law and Justice (PiS) has proven that they don't take under any consideration the expertise of independent institutions which issue their opinions based on the work of experts in a field of human rights and protection of personal data. Polish Commissioner of Human Rights issued a recommendation for the Constitutional Tribunal to release a statement saying that the Surveillance Act is unconstitutional. Unfortunately, it is not likely that the Constitutional Tribunal under Julia Przylebska is going to comply with the request and issue an opinion contrary to PiS's expectations.

Changes to laws voted in by PiS allow the police and other services through the use of a permanent link the uptake of data on customers of companies that provide Internet access services. This permanent link enables the forces mentioned above to retrieve data non-stop without asking anybody for permission.

Before the amendments were introduced, special services could retrieve such data only in the case of specific investigations that they were working on. Data disclosure took place only when necessary and according to accepted procedures. Currently, the services can retrieve data about any person and at any time, even if they have no suspicions with regards to them. In accordance with article 20c to the Police Act amended by PiS:

Telecommunication operator, post office operator or any electronic data communication service provider gives free of charge access to data referred to in section 1 to the following individuals or services:

1. To a policeman authorised in writing by the Chief of the Police, Commanding Officer of the Central Bureau of Police Investigation or anyone authorised by them;
2. On verbal request of a policeman who has a written authorisation of the persons referred to in pt 1;
3. By means of electronic network to a policeman who has authorisation of the persons referred to in point 1;

Intelligence services are no longer obliged to obtain the courts' permission to commence surveillance in all instances. In line with the amendment to the Act, it will be sufficient to produce a report every 6 months on total of data collected by the services over this period. The question is what the courts are to do with all this data, if

according to the Act, intelligence services are permitted to invigilate everyone as they wish.

Panopticon Foundation, organisation concerned with 'controlling of the controllers', summed up the year since introduction of this Act in a report, where they pointed to the subsequent element to the amendment of the Act. Before its inception, Office of Electronic Communication (UKE) was obliged to publish information passed on by telecom operators of the total number of enquiries received from the police and other authorised services and the number of enquiries answered by the operator. Such requirement was revoked by PiS.

In return, *in order to make it open to the public to access the necessary information* (quote from validation of the amendment), the so called Surveillance Act, imposes on the Minister of Justice an obligation of annual presentation to the parliament of the aggregated information on data processing. Alas, the range of this 'aggregated information' will be much smaller than that published by UKE.

Report of the Minister of Justice will not, for example, contain information of the total number of enquiries for the so called 'subscriber data' (details of the owner of the phone or internet connection), because this data will be collected exclusively in the internal registers of the services and in line with the Act, will be classified, i.e. not open to the public. It is clear that PiS want to hide from the public the scale of the surveillance.

Fortunately, as the Polish intelligence services under PiS's government monitor people's activities on the internet more often, it is easy to check the intensity of such monitoring by looking at transparency reports published every 6 months by Facebook, see the table below:

	Number of enquiries from government services	Number of FB accounts in the enquiries
1st half of '13	233	158
2nd half of '13	220	192
1st half of '14	288	377
2nd half of '14	305	349
1st half of '15	492	444
2nd half of '15	611	627
1st half of '16	991	1032

<https://govtrequests.facebook.com/country/Poland/2016-H1/>

These reports provide numbers of enquiries received by Facebook from intelligence services to disclose FB users' data. As seen in the first half of 2016, Polish services asked FB for data of over two times more users than in the corresponding period in 2015.

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