POSITION

The Act of disclosing information regarding security services documents from 1944-1990 and the contents of those documents ["Act"] came into effect 15 March 2006. This Act violates human rights and fundamental freedoms in numerous ways.

The definition of "cooperation" with secret services gives rise to conclusions contravening the constitutional principle of proportional limitation of rights and freedoms as well as the prohibition of discrimination in political, social and economic life. This is so because the concept of "cooperation" includes not only active acts but also feigned collaboration or avoiding providing information: it is sufficient that a formal agreement to cooperate existed. However, pursuant to Constitutional Court jurisprudence, a finding of "cooperation" requires more than an expression of a willingness to cooperate – it necessitates actual acts constituting the alleged cooperation.

The Act's broad lists arbitrarily encompass categories deemed as public functions.

The ban on performing the journalistic profession as a sanction for a "lustration lie" is a clear assault on the freedom of speech. No one may be wholly stripped of the right to publish in the press, periodicals, electronic media or books. The same is true of analogous sanctions against teachers in academia. In this way, the state is interfering with the constitutionally guaranteed freedoms to teach and conduct academic research.

Pursuant to the Act of 18 December 1998 on the Institute for National Remembrance – Commission for Investigating Crimes Against the Polish Nation, the Institute for National Remembrance may refuse an applicant access to documents, the contents of which indicate the applicant was treated by security services as a secret informer or assistant in the operational collection of information, agreed to cooperate or performed assigned tasks. This deprives the citizen of the constitutional right to have access to documents and data concerning that citizen. It circumvents Constitutional Court jurisprudence, which guarantees interested parties, including those other than harmed parties, access to documents that concern them. These limitations and technical difficulties in obtaining materials concerning the relevant parties limit the ability to defend oneself, a right guaranteed to all.
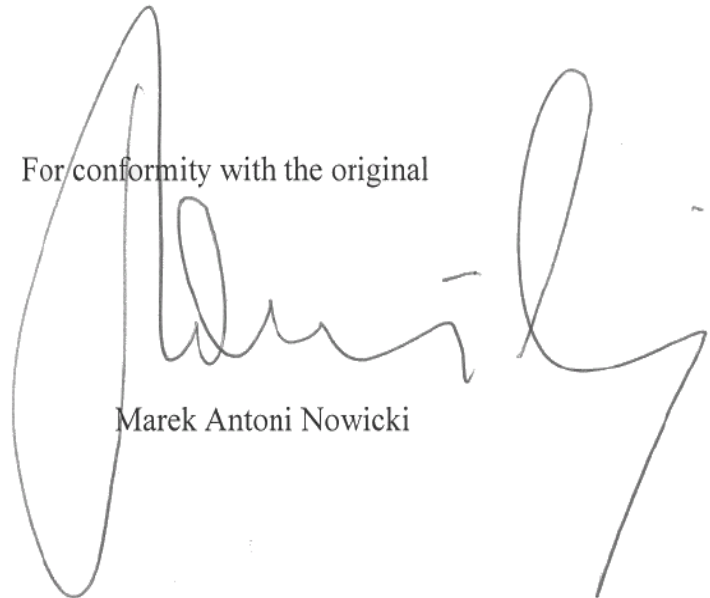
In connection with the future list of people cooperating with state security services to be published by the Institute for National Remembrance, we emphasise that no public office may publicly disclose any information about a party without his or her prior knowledge and opportunity to object, including through court proceedings. In a state with the rule of law, the exception to this applies to people accused of crimes, though still not in all cases and within strict limits.

Finally, from the point of view of fundamental guarantees of individual rights, a lack of legal and organisational solutions providing for completion of the lustration procedure within a reasonable time is impermissible. It is unacceptable to impose the officially announced several-year waiting periods on those subject to lustration. This constitutes a drastic violation of the guarantee to personal security and legal certainty. Moreover, it results in lustrated parties being subject to abuse and discrimination, especially in employment and public life.

Warsaw, 18 March 2007

Members of the Helsinki Committee in Poland: Halina Bortnowska Dąbrowska, Teresa Bogucka, Janusz Grzelak, Zbigniew Hołda, Jacek Kurczewski, Wojciech Maziarski, Michał Nawrocki, Marek Antoni Nowicki, Danuta Przywara, Andrzej Rzepliński, Marek Safjan, Stefan Starczewski

For conformity with the original

Marek Antoni Nowicki