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## FOR Communication 17/2023:

### Return to the Polish People's Republic: banning photography will not replace the professional counterintelligence services

#### Synthesis:

- With the votes of the ruling coalition, the Parliament passed an amendment to the Penal Code and several other laws.
- The law, which amends the National Defense Act, reintroduces a ban on photographing - very broadly defined - objects of strategic importance. Such strategic objects can include, for example, bridges, railway stations, hospitals, GSM transmitters, or even certain universities.
- The list of objects of strategic importance for national security and critical infrastructure that may be subject to a photography ban is not publicly available. Citizens will not be able to determine whether a specific object falls under this ban.
- This ban not only is entirely ineffective and is a significant intrusion into citizens' lives, but it also gives a false sense of contentment to state's institutions responsible for security. Legal solutions reminiscent of the 1950s are not adequate to today's technological advancements.

#### Which objects are strategic? It's not clear

The amendment introduces a ban on photographing and filming:

- Objects of strategic importance to the security or defense of the state.
- Objects belonging to the national defense ministry.
- Critical infrastructure objects – in cases where they are marked with a "Do not photograph" sign.

- Individuals and property located within the above-mentioned objects.

The act uses terms defined in the ordinance issued on the basis of the National Defense Act (objects of strategic importance for state security) and the Crisis Management Act (critical infrastructure objects).

Objects of strategic importance for state security might include:

- Warehouses, including those for gas and oil, power stations.
- Bridges, overpasses, and tunnels on roads and railway lines of defensive importance.
- Airports.
- Postal and telecommunications operators' facilities.
- Facilities of the National Bank of Poland (NBP).
- Facilities subject to or supervised by the Minister of Justice – including courts.
- Power plants, mines, transmission networks.
- Companies using hazardous materials.

Critical infrastructure objects include systems:

- Energy, water, and food supply.
- Communication and information networks.
- Financial systems.
- Healthcare.
- Transportation.

**In this case, the list of objects which are actually on the list also will not be publicly available.** However, for critical infrastructure objects – unlike objects of strategic importance for state security – it will be necessary to display a "Do not photograph" sign.

#### **Penalty:**

Photographing or recording the aforementioned objects is to be considered a misdemeanor punishable by **arrest or a fine**. The court may also rule the confiscation of items used to commit the misdemeanor,

such as cameras, photographic devices, drones, and other equipment on which the recordings were stored or preserved.

#### **Absurd effects of the regulation:**

**Legislator uses big words in the law:** "strategic", "state security", "critical infrastructure", "participation in foreign intelligence". **However, it is crucial to look at the practical effects of the proposed regulations. The application of the new law will lead to absurd effects.**

It will be very easy to accidentally risk an arrest. Merely driving a car with a dashcam on a road of defensive importance is enough – it is certain that such roads include, for example, the east-west highways. **Photographing Warsaw will be like navigating a minefield.**

It will be illegal to take pictures at airports, post offices, roads, stations, railway lines, or hospitals. Even a photo of a building with a GSM mast can get anyone into trouble.

#### **Bloggers and hobbyists in the crosshair:**

Recently, bloggers who expose the compromising gaps in the security of government's objects, especially special services', have gained significant popularity. Planned changes seem to be targeting them purposely. Understandably, the activities of such individuals are somewhat irritating for the institutions they expose, often revealing the incompetence of those responsible for protecting strategic objects. **An easy way to hide flaws is to introduce the discussed photography ban. However, security gaps will remain, and a real, determined spy will be able to exploit them to obtain information or commit sabotage.**

Examples of how such ban can work in practice may be found among railway enthusiasts. For several months, police and Railway Guard have been enforcing a non-existent ban on taking pictures of trains, stations, or railway lines<sup>1</sup>. The regulations have not yet been changed, but hobbyists are already being pursued by police on railway embankments as potential saboteurs<sup>2</sup>.

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<sup>1</sup> J. Madrjas, *Miłośnicy kolei nie mogą już robić zdjęć? Prawo się nie zmieniło*, Rynek Kolejowy, April 21, 2023, <https://www.rynek-kolejowy.pl/mobile/milosnicy-kolei-nie-moga-juz-robic-zdjec-prawo-sie-nie-zmienilo-113012.html>

<sup>2</sup> T. Śliwiński, *Miłośnicy pociągów nie chcą być traktowani jak przestępcy. Co na to służby?*, Tułódź.pl, June 13 2023, <https://tulodz.pl/polska-i-swiat/milosnicy-pociagow-nie-chca-byc-traktowani-jak-przestepcy-co-na-to-sluzby/FE4HLeTha5AUxtlM1KjS>.

The argument about the need of hiding the transports of military equipment destined for Ukraine or the movements of the Polish Army and allies throughout the country is raised. This is obviously necessary. Instead of deeply interfering with people's lives, setting Poland back by decades in this respect, a simpler method would suffice – cover the transported equipment.

### Law from the 1950s:

The justification of the amendment does not explain the reasons that directed the act's authors during its creation. The ban will allegedly be "another legislative action to support the identification and counteraction to espionage"<sup>3</sup>. **Such far-reaching interference in the daily lives of ordinary people deserves a more exhaustive justification.** Because the act was submitted by a group of deputies and is not a government project, the Government Legislation Center does not provide drafts of executive acts, in this case, the regulation of the Minister of National Defense setting out the procedure for obtaining a permission to photograph. This raises concerns about the lack of neutrality of the authority granting authorization and unequal access to strategic objects. It is easy to imagine a situation where only media favorable to the government will have the opportunity to record events taking place in "strategic" objects.

Police will gain the legal ground to confiscate recording devices used to commit an offense – not just expensive photographic equipment but also devices like phones or computers. These devices contain sensitive data of the potential offender.

**This creates a temptation to abuse the law to search the contents of smartphones or laptops** belonging to individuals targeted by authorities, for instance, during protests. It becomes even more crucial for citizens to secure data stored on their devices and store it in the cloud. Authorities will not formally be able to access this data – as doing so would still constitute illegal breaking or bypassing of computer system security and unlawfully obtaining information, which is an offense under Art. 267 of the Penal Code.

**Attention should also be paid to the inadequacy of the proposed bans.** In the era of satellite reconnaissance, miniaturization of recording equipment, and Internet – which allows for the instant transfer of

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<sup>3</sup> Draft act amending the Penal Code and certain other acts (print no. 3232), <https://orka.sejm.gov.pl/Druki9ka.nsf/0/F53D07E65F8EC17AC12589B1003F2A96/%24File/3232.pdf>.

high-resolution images to the other side of the world – **prohibiting photographing of properties will be entirely ineffective, bordering ridiculous.**

#### **Conclusion:**

The ban is not only useless when confronted with modern espionage technology but even **detrimental to the national security. It provides a false sense of security and contentment to government services and institutions.** It's evident that not all objects or critical infrastructure should be exposed to public view. But it's the responsibility of the services to hide and protect certain activities or objects. A sign with a crossed-out camera is just that – a sign. It will deter a law-abiding citizen from taking a selfie, but it won't stop an agent of hostile intelligence agency or a saboteur.