

*Dear Members of the Committee,
Ladies and Gentlemen,*

On behalf of the Polish Helsinki Foundation for Human Rights and the Panoptykon Foundation, I would like to thank you for inviting me to the session of the Civil Liberties, Justice and Home Affairs Committee of the European Parliament. I would like to underline that all views shared today were prepared in cooperation with Katarzyna Szymielewicz of the Panoptykon Foundation, and are made on behalf of two organizations. We are grateful for the interest of the Committee in developments in Poland regarding the PRISM affair and the reaction of Polish NGOs.

Our organizations, in cooperation with the Polish section of the Amnesty International, were quite surprised with lack of proper reaction of the Polish government and politicians to the PRISM affair and other disclosures made by Edward Snowden. We did not have any debate whatsoever what those disclosures mean for rights of Polish citizens and whether constitutional right to privacy is sufficiently protected in the Polish territory. There was also no parliamentary debate on this issue.

Therefore, as a first step we decided to organize a conference and to invite major politicians to respond to different questions posed by NGOs. Conference took place on 11 September 2013. However, neither Prime Minister nor major ministers responsible for security-related issues accepted our invitation. Only Minister Michał Boni, responsible for administration and digitalization, was ready to talk to NGOs. During our debate he declared e.g. that he would bring privacy issue to the attention of Viviane Reding in the context of the Transatlantic Trade and Investment Agreement. Major politicians affiliated with human rights parliamentary committees also attended the debate. They declared calling for debates devoted to PRISM during their committees' session. However, such debates were until now never called. Direct consequence of the conference was the Ombudsperson's request directed the Prosecutor's Office for investigation regarding PRISM.

In general, however, our organizations were dissatisfied with the outcome of the conference. Therefore, one month later we have decided to prepare a set of requests for disclosure of public information by different state agencies and institutions. In particular, we have made 100 specific questions, addressed to different institutions, such as the Prime Minister, Chancellery of President, Minister of Justice, Minister of Foreign Affairs, Minister of Interior, secret services, Prosecutor General, parliamentary committees, Office for Electronic Communication, Privacy Commissioner, and Ombudsman. We asked about specific issues related to:

- their knowledge or awareness of the PRISM,
- start of proceedings by the prosecutor's office as a result of disclosures,
- cooperation between Polish and US secret services,
- contacts with the US administration since Snowden's disclosures,
- protection of Polish citizens against potential abuses (procedures applied, verification of compliance with domestic law),
- reaction of parliamentary committees to inactivity of the government,
- technical aspects – e.g. use of XKeyScore by secret services,
- procedure of dealing with Edward Snowden's request for visa.

It is certainly difficult to make a summary of all our requests in a couple of sentences. To great extent they were prepared taking into account the following factors:

- previous experience in dealing with the freedom of information laws, including litigation experience. We have successfully litigated cases concerning access to statistical data on wiretapping in Poland or on costs of functioning of anonymous witness programs in Poland. Furthermore, we obtained crucial information relating to the CIA rendition program with the use of the Freedom of Information Law,
- activities of the German NGOs dealing with similar issues and making similar requests earlier to German state institutions,
- limited applicability of the Freedom of Information Law – we can ask only for specific information and we should be aware of restrictions stemming from nationality security concerns (e.g. we believe we can ask about existence of agreements on cooperation between secret services of different states, but not about content of such agreement),
- division of competences between different state institutions (some of our questions overlap, because it is difficult to specify which organ is responsible for a given issue).

From the very beginning we were aware that some state institutions would not answer to our questions. But we are prepared for such outcome. We have experience in litigation of cases before the administrative courts and ultimately some of questions will be subject of further court proceedings. Even if those proceedings last for 2-3 years, final result will of utmost importance for us. We also think that our set of questions should be an inspiration for journalists. Interestingly, lack of response by Polish politicians to the PRISM affair was highly commented in media during recent visit of the US State Secretary John Kerry in Poland.

As of 18 November 2013, we have received initial answers from state institutions. Some of them provided us with comprehensive answers regarding their activity as regards PRISM (e.g. the Privacy Commissioner). Some of them responded only partially, but those answers were of general nature or confirmed state of affairs that was quite predictable (e.g. Secret Services Committee of the Polish *Sejm* confirmed that there was neither meeting nor even motion by individual member to discuss PRISM). Some state institutions declared prolongation of a term to respond until mid December, due to complexity of our questions (e.g. Prime Minister or the Minister of Foreign Affairs). Finally, some secret services already answered that because of national security they cannot answer any of our questions.

We were quite surprised by some of the answers to our questions:

- most of institutions declared that they have knowledge on the PRISM from media. Such declaration was made inter alia by the Agency for Internal Security and the Minister of Justice;
- the Minister of Justice declared that in August 2013 he had a meeting with the US Ambassador to Poland. However, during this meeting PRISM issue was not raised;
- PRISM was subject of discussion during the meeting of the Council of the European Union devoted to justice and home affairs on 7 October 2013. However, we do not know conclusions of this meeting, as formal minutes were not prepared;
- during above meeting Polish authorities signalled that explanation of the PRISM and other programs of massive surveillance are necessary, but should not influence binding treaties with the US, such as PNR agreement or SWIFT agreement;

- none of parliamentary committees declared willingness to organize a session devoted to the PRISM affair.

At the moment we wait for further answers and extended transparency of Polish authorities. We hope for certain level of their political accountability for negligence to react to Snowden's disclosures. As citizens we believe we have the right to know what the state is doing in order to protect our privacy. Unfortunately, this issue is not subject of political divisions; majority of politicians tend to accept the existing status quo. Therefore, we believe NGOs have a special role to play here, with the use of the only instrument they have – Freedom of Information Law. We also think, taking into account our previous experience with the CIA rendition program, that the use of freedom of information laws may be of help to investigative committees established at the European level.

Adam Bodnar

Speaking on behalf of the Polish Helsinki Foundation for Human Rights and the Panoptykon Panoptykon Foundation

Attachment:

Adam Bodnar, Katarzyna Szymielewicz, *Poland's citizens need to know the impact of Prism on their life*, Guardian – Comment Is Free, 16 October 2013, available at <http://www.theguardian.com/commentisfree/2013/oct/16/pires-prism-poland-surveillance-threat>