

## **POLITICAL AND SOCIAL DETERMINANTS OF LEGAL REGIME, POLITICAL OVERSIGHT AND TASKS PERFORMED BY SPECIAL SERVICES - DEMOCRATIC, TOTALITARIAN AND POST-TOTALITARIAN PERSPECTIVE**

### **Introduction : Initial assumptions**

Special services (internal security, intelligence and counterintelligence) are a specific state's tools in the area of national security matters. The transition between totalitarian regime and democratic state is a very special period for the society. In such time old security structures may pose a serious threat for the new democratic government. The historical analyses prove that former liaisons are hardly to cut, that it is a big temptation to unconstitutional use of special services.

Making research in this area is especially difficult because of the secrecy of those services' structures and actions. There are only a few serious studies about the structures of the special services and political and legal determinants of their shape and tasks. If there are many books about history of the special services in democratic countries and scandals connected with them, there are only a few positions about services in Communist and post- Communist Eastern Europe.

That is why I decide to put my attention especially on those countries, trying to compare the situation in the area of special services in those countries with the democratic and totalitarian models. Those models I examine partly from books, partly from my own analysis of Communist regime in Poland 1944-1989.

In the beginning of my research I have examined the roots of security and intelligence agencies in democratic and totalitarian states. This approach have given me the necessary comparative data to examine the problem of the political and social determinants of legal regime, political oversight and tasks performed by special services in post-Communist countries. I do not focus on crimes committed by totalitarian regimes and scandals in democratic countries in which special services were involved. It has not been a main subject of my research. In my analyze of the totalitarian and democratic model of the special services I have use some theories taken from literature on the subject.

The historical perspective of security system in democratic and totalitarian countries I have examined mainly from books about US intelligence community, about Britain security system and about construction of democratic security system in post-war Germany (German Federal Republic). Unfortunately the problem of origins and determinants of those systems was not the main subject of any of those books. That is why I have to examine my opinion about this problem from many books about

various historical aspects of the security system in those countries. My analysis of the problem of relations between democratic states and its security agencies owes a great deal to the work of Laurence Lustgarten and Ian Leigh (*National Security and Parliamentary Democracy*)<sup>1</sup>, to the Frank Cass' Series *Studies in Intelligence*<sup>2</sup> to the Morton H. Halperin's *Intelligence in Open Society*<sup>3</sup> and to the Thomas I. Emerson's *National Security and Civil Liberties*<sup>4</sup>. and other works on the US Intelligence Community and US oversight system<sup>5</sup> and other books and papers specified in the foot-notes.

To examine the situation in the area of special services in the post-Communist countries it is necessary to know how those services worked in the Communist regime. This system had been changing from the NKVD to the KGB and had its specific modifications in each Communist country.

The problem of security system in a totalitarian state I have examined mostly from the books focused on the Nazi regime in Germany and the Communist system in Poland and from the Polish legal acts 1944-1989. In my opinion the Soviet totalitarian political police model had its origin in the Tsar's Russia.

I examined the problem of the post - Communist and post-Soviet security system from open sources - as well Russian and Polish as western. Polish, Czechoslovak and Russian open sources (Polish newspapers: *Życie Warszawy, Życie, Gazeta Wyborcza, Magazyn 997, Polska Zbrojna, Nowa Europa, Nowy Hwiat, Trybuna, Konfrontacje, Polityka, Wprost*, Russian dailies: *Izvestia, Pravda, Sievodnia, Kommiersant Daily, Niezavisimaya Gazieta*, Czech daily *Lidove Noviny*, Russian TV stations' broadcasts: *ORT, RTV, NTV*, Internet web-sides). Polish, Czech and Russian legal acts (Polish Official Governmental Gazette "*Dziennik Ustaw*", Czech "*Sbornik (Sb) CR*", Russian Laws and President's Decree) gave me a necessary data to examine the problem of liquidation and transition of the Communist security system in Eastern Europe and in Russia.

In my research I have focused on the less known Communist special services in Poland and Czechoslovakia, because Soviet services have been already examined in literature. I have also focused on the less known differences between Nazi and Soviet security systems. The post-Communist services I have examined on the Polish and Russian examples. The Czechoslovak services, although formally new, in fact battles against the same difficulties as others.

In specific Chapters I discuss some theories taken from the works mentioned above. In Chapter 1, I examine the thesis that the clear definition of the national security concept is a crucial condition to define, legitimize and limit special services' activity. In Chapter 2, I discuss the relationship between the shape of organization of special services and the political and administrative in democratic, totalitarian and post-totalitarian countries. In Chapter 3, I examine the thesis if the strength and democratization of the state could be measured by the degree of the special service'

---

<sup>1</sup> Laurence Lustgarten and Ian Leigh - "In from the Cold (National Security and Parliamentary Democracy)", Oxford 1994.

<sup>2</sup> "Intelligence Analysis and Assessment", London 1996.

<sup>3</sup> Morton H. Halperin, "Intelligence in an Open Society", 1985.

<sup>4</sup> Thomas I. Emerson (National Security and Civil Liberties, 1984.

<sup>5</sup> "The Evolution of the U.S. Intelligence Community", in: "Preparing for the 21st Century. An Appraisal of the U.S. Intelligence Community", "Access to Classified Information by Members of the United States Congress", Center for National Security Studies, Washington 1995, James S. Van Wegenen, "A Review of Congressional Oversight", Studies in Intelligence, Vol.01. No 1, 1997.

s involvement into politics. In Chapter 4, I discuss the relationship between the Legal Mandate of the special services and the limits of services' responsibility, competencies, and conditions for the effective control and oversight. In Chapter 5, I present the thesis that the oversight, control and accountability system is a last and most important level of the protection against special services' abuses. In Chapter 6, I discuss the Psychological Determinants of Legal Regime, Political Oversight, and Tasks performed by Special Services. In the last, Sixth Chapter I present final conclusions of my research.

## **Chapter I**

### **Differences in definitions of the legal environment of the services' activity - national security versus security of the ruling elite.**

At first it is necessary to define the area of special services activity, the conception of the national or state security. It is strong tendency in democratic states to adopt the US conception of national security as a complex conception of the security of state, its citizens and a theoretical basis for the special services' activity.

In the USA the concept of national security is a theoretical basis for the creation of so called "Intelligence Community" - the system of American special services. The author of the national security idea - James Forrestal, a postwar Secretary of Defense

nse - had postulated to replace the old "passive concept of self-defense" in American policy by the new, more active concept. Since that time the national security concept has been an essential basis for the US foreign activity all around the World, especially in its actions against Communist expansion after World War II.<sup>6</sup>

US national security is a wider concept than national defense, which limits state's activity to defense, reactive actions defending the state territory. It postulates the interrelation of many different political, economic and military factors that are seen to have automatically a direct impact on America's core interests. National security combine all aspects of the political, economic and military factors in the defensive and offensive actions in the name of defense of physical existence of the nation and its wealth and rights in present shape of state, its territory and constitutional order. "Nation" and "national" should be understood in a civil not ethnic way. Such conception of national security combines the security of the constitutional order and civil rights execution. It appeals also to economic, ecological and ethnic crisis, not only to the strict military threats.

Clear definition of national security concept is necessary to define later the limits of special services' specific activity, for example the activity of intelligence services.<sup>7</sup> The next step is to divide the competencies of the specific services, although it is impossible to avoid tensions among them<sup>8</sup>.

Outside the USA such concept of national security was found controversial and not clear. First doubts arose on the language level. In Europe some people understand national security as the security of state, some as the security of nation in ethnic or citizens sense.<sup>9</sup> According to some scientists the European tendency to "stateization" of the national security has its roots in history. In Europe, unlike the USA, national security bureaucracy, military forces and traditions, foreign offices, and police systems all pre-dated democratic institutions and ideas like equality, individual rights and citizenship<sup>10</sup>.

There are also other theories. For example Lustgarten's and Leigh's "democratic conception of national security" strip the concept down to its irreducible minimum, a core of validity which can then be accepted as requiring extraordinary measures - such as special services operations with relevant oversight and accountability<sup>11</sup>. Also Thomas I. Emerson suggested that national security should be limited to matters that really threaten the physical security of the nation and shouldn't be exaggerated.

---

<sup>6</sup> Laurence Lustgarten and Ian Leigh - "In from the Cold, op. cit., pg. 24

<sup>7</sup> National Security Act z 1947., "Preparing for the 21st Century. An Appraisal of U.S. Intelligence", prepared by Commission on the Roles and Capabilities of the U.S. Intelligence Community, in: "Making Intelligence Smarter. The Future of U.S. Intelligence". Council of Foreign Relations, 1996, pg.5

<sup>8</sup> There is also a permanent tension between military and civilian security and intelligence services. Although the National Security Act established the CIA as the only agency charged with a "national" intelligence mission, there were doubts in the other agencies. The centralization efforts of the DCI, NSC and some presidents were paralyzed by the various factors. This struggle and permanent discussion over the situation and prospects of the U.S. intelligence community reflect the democratic area in which those services operate.

<sup>9</sup> According to Laurence Lustgarten and Ian Leigh "national security" is actually a compound of two complex ideas: nation or state and security. Those two elements are never entirely separable. They referred to the definitions of national security based on the concept of Barry Buzan ("People, States and Fear", London 1991). He suggests that national security is an "essentially contested concept" which contains ideological and moral element. That's why every definition has highly political sense and it is hard to avoid the politicization of this matter. Any analysis must approach the concept in two complementary ways - internal and external. Lustgarten and Leigh, op. cit., pg. 4..

<sup>10</sup> According to Samuel Huntington (American Ideals versus American Institutions, 1982, p.97)

<sup>11</sup> Laurence Lustgarten and Ian Leigh - "In From the Cold -National Security and Parliamentary Democracy", op. cit., pg. 35.

rated.»<sup>12</sup> In this process the role of legal framework and parliamentary oversight and accountability of the security and intelligence services is crucial.

If we can discuss the theory of necessary limitation of the national security concept in democratic state, it is obvious that the use of special services and their special tools should be limited and controlled. So we can say that in totalitarian state the special services activity is especially wide, undefined and uncontrolled.

In the totalitarian states there is a tendency to avoid defining national security matters. There is a significant tendency to create totalitarian concepts in the security area - for example "the defense of the revolution", "the defense of the Reich", etc.

That's why there was no clear definition of the security area in Communist Poland, although communists used many concepts to justify security services' terror - for example - "class struggle", "public security", "protection of the national-democratic regime" and later "the conception of state security".

In the beginning of the Communist regime in Poland (1944-1954) there were three basic concepts in the area of state's security - the conception of so called "class struggle"<sup>13</sup>, "common security" and "public security".<sup>14</sup> The first term was used in services' and communist's internal documents and regulations,<sup>15</sup> the next two in official statements.<sup>16</sup>

The "class struggle" and "class foe" described - by negation - the area of Communist security. It was also a basis for the special service's political activity. These concepts were used to describe all opponents or even non followers of the Communist regime.<sup>17</sup>

In the beginning of the Communist regime in Poland (Polish People Republic - later PRL) communists hid their repressive security concept in the concept of "common security", because of bad connotations of the name "state security" connected with Nazi Gestapo and Soviet NKVD.<sup>18</sup> This common security was mainly described as the protection against war criminals, Nazi collaborators and other enemies.<sup>19</sup>

---

<sup>12</sup> He claimed that "national security is not achieved at the expense of constitutional liberties. A tightly closed security system, seeking to avoid all risks, is not compatible with a democratic society nor is it ultimately attainable. The effort to resolve the tensions between national security and constitutional rights should not be looked upon as a zero-sum game because it is not true that the greater the degree of constitutional liberties maintained, the lesser the degree of national security achieved, or that the lesser degree of constitutional liberty the greater the degree of national security. Instead, there must be an accommodation between two systems in which each supplements and supports the other. Thomas I. Emerson - National Security and Civil Liberties, 1984, pg.1.

<sup>13</sup> The Deputy Chief's of the RBP Regulation on the registration of the hostile elements, of 05.12.1945, The Chief's of the MBP Instruction on the registration of the war criminals, of 27.03.1945

<sup>14</sup> Law on the PKWN.

<sup>15</sup> Law on the PKWN.

<sup>16</sup> Law on the PKWN.

<sup>17</sup> Those foes had to be identified, isolated and then eliminated. The security organs were obliged to book every class foe and then to elaborate them. - The Deputy Chief's of the RBP Regulation on the registration of the hostile elements, of 05.12.1945, The Chief's of the MBP Instruction on the registration of the war criminals, of 27.03.1945.

<sup>18</sup> Programmatic Manifest of the communist Polish Workmen's Party from 01.03.1942 and from November 1943 ("What we are fighting for").

<sup>19</sup> Project of the programmatic declaration of the communist Polish National Committee in USSR (November - December 1943), in: "Kształtowanie się podstaw programowych PPR w latach 1942-1945, Warsaw 1958, pg. 477: "Committee has to guarantee the democratic rules of right. Liquidate all nazi agents. Expel from public posts all nazi's collaborators, judge the traitors and organize the citizens militia to protect the common security». In communist Polish Peoples Republic (PRL) the Law on Polish Committee of National Liberation" on 21.07.1944 authorized the creation of the Polish Committee of National Liberation (PKWN) and with the department of the Public Security inside.

"The public security" was a continuity of the conception of "common security" and was protected and defended by all security structures as police called Civic Militia (MO) and Security Offices which were gathered in one structure of the Department, later Ministry of the Public Security (RBP/MBP)<sup>20</sup>

In 1954 the "public security" was separated from the "public order" by the division of the security service's and police structures.<sup>21</sup> The concept of public security as something different than public order was confirmed in 1956, when the tasks of police (MO) and security service (SB) were secondly divided.<sup>22</sup>

In 1983 the "public security" term was replaced by the conception of the "state security". The term "public order" had been still in use for MO tasks.<sup>23</sup> This division - "state security" versus "public order" were used till the collapse of the communism in Poland and in the first years of independence.

Post-totalitarian states have specific difficulties in defining the area of national security. There are two extreme proposals. The first the adaptation of former Communist conceptions with the reverse of marks - from communism to anti-Communism. The fight against enemies of the Communist regime is replaced by the fight against enemies of the democratic order. The second extreme is a total neglect of those problems. In both examples the former language is in use. For example in independent Poland the very narrow area of the security services activity is described using old Communist terms.

In Polish legal acts after 1989 there are such formulas as internal and external security (Constitution)<sup>24</sup>, state security (Constitution, Law on the Ministry of Internal Affairs and Administration Act, Law on the Office of State Protection)<sup>25</sup>, protection of the constitutional order (Law on the Office of State Protection)<sup>26</sup>. There are also no differentiation between such formulas as state security and national security.

In Russia there has been a strong tendency to imitate US. concept of national security, but without its legal limitations. In effect nowadays Russia western-styled language is used for the definition of totalitarian aims, although with official pro-democratic declaration. But until today there has been no clear definition of the Russian national security interests and old, traditional terms have been still in use - for example "defense of state sovereignty", "defense of state integrity"<sup>27</sup>, "internal, foreign

---

<sup>20</sup> The PKWN's Decree on the Civic Militia (MO) - Dziennik Ustaw RP of 1944, No 7, pos. 33, and The Minister's of Public Security Order No 13/18.03.1949, Ministry of Internal Affairs Archive, No Ac-872/49.

<sup>21</sup> The Committee for Public Security (KBP) created in 1954 after Stalin's death, was "an government's organ in the area of the public security, created for secure the constitutional national-democratic order and regime. KBP was fighting all kind of activity against national-democratic order. - Dziennik Ustaw z 1954, no 54, poz.269.

<sup>22</sup> Than KBP was liquidated and its personnel transferred to the Ministry of Internal Affairs (where police -MO had already been). It was clearly confirmed by the dividing competencies of the MO and SB and by the territorial structure of the security and police apparatus. There the separated structures responsible for the public security were created inside the local police stations (MO). This Security Service (SB) had its own commanders independent from the police (MO) local chiefs. Government's Declaration of, z 13.12.1956.

<sup>23</sup> The 1983 Act on the Ministry of Internal Affairs Office was a first legal act defining the ministerial constitutional duties as the protection of the state security (conducted by the Security Service - SB) and the protection of the public order (conducted by the police - MO - Law on the Minister of the Internal Affairs on 1983 - Dziennik Ustaw 1983, no 38, poz. 172.

<sup>24</sup> The Constitution of the Polish Republic of 02.04.1997.

<sup>25</sup> The Law on the Ministry of Internal Affairs and Administration, of 21.06.1996, The Law on The Office of State Protection, of 06.04.1990 with later amendments.

<sup>26</sup> Ibidem.

<sup>27</sup> This tendency was confirmed by legal acts. For example the Ministry of the Security of Russia (MBR) had 25 tasks, including defense of states sovereignty, integrity and defense ability, cooperation with other post-Soviet stateless security structures, etc. The Ministry was responsible for realization of the individual rights, freedoms and defined in by law individual interests. (Russian President's Decree 42/92, on 24.01.1992). Although such approach was criticized as totalitarian, it has been continued in later acts and laws. .

n and defense policy in the areas of state security", "protection of state sovereignty", "social-political stabilization of the society", "protection of the citizens' rights and freedoms"<sup>28</sup>.

## **Chapter II. The shape of organization of special services as the reflection of the political and administrative system.**

According to Michael Herman ("*Assessment Machinery: British and American Models*")<sup>29</sup> the administrative system of each country results in the shape of organization of the special services. In the USA the central power of the Director of the Central Intelligence and the Central Intelligence Agency fit the presidential style of government with only loose Cabinet responsibility.<sup>30</sup>

As the fundamental element of US Constitution is the separation of powers between the Congress, the executive and the judiciary, so each of those three bodies has its own responsibility over the intelligence system. The Parliamentary commissions have access to almost all kind of information about national security<sup>31</sup> and - especially in last 20 years have been playing a very active role in the system of oversight of intelligence activity.<sup>32</sup>

For example in cabinet system as British there is not any central intelligence institution. Its role is played by a system of collective responsibility represented by Joint Intelligence Committee. This system was exported to the other Commonwealth states as the cabinet system had been.<sup>33</sup> In old monarchies like British for many years there had been no law describing the mandates and methods of the work of the security services. Those bills have been passed during the last decade.<sup>34</sup>

British, so-called "Westminster model" of parliamentary democracy is characterized by a fusion of executive and legislature which results in all but the rarest cases in the domination of the legislature by the executive. All problems of this system could be resolved only within it. Within this culture the conduct of government (especially in the area of special services) is seen as something for knowledgeable initiators. The masses are isolated from the government affairs. This ethos is responsible for

---

<sup>28</sup> On the 05 of March 1992, The Russian Supreme Council passed the Law "On the Security", prepared earlier by the Soviet Supreme Council) created a new institution - The Security Council. Its duties were promulgated by the President's Decree No 547, of 03.06.1992

<sup>29</sup> Michael Herman - "Assessment Machinery: British and American Models", in: "Intelligence Analysis and Assessment", London 1996, pg. 29

<sup>30</sup> Ibidem, In the USA presidential system reflects in the special position of the Director of Central Intelligence who is also the head of the CIA. DCI and CIA are the only offices responsible for a "national" intelligence mission. President Ronald Reagan even strengthened the DCI's position nominating him, for the first time, to the cabinet rank. "The Evolution of the U.S. Intelligence Community", in: "Preparing for the 21st Century. An Appraisal of the U.S. Intelligence Community", 1996, pg. 15.

<sup>31</sup> "Access to Classified Information by Members of the United States Congress", Center for National Security Studies, 19.06.1995, s.1.

<sup>32</sup> "The Evolution of the U.S. Intelligence Community", in: "Preparing for the 21st Century. An Appraisal of the U.S. Intelligence Community", 1996, pg. 1-2., James S. Van Wagenen - "A review of Congressional Oversight", in: "Studies in Intelligence", Vol. 01, No 1, 1997. pg. 1-2.

<sup>33</sup> Michael Herman - "Assessment Machinery: British and American Models", op. cit., London 1996, pg. 29.

<sup>34</sup> British Security Service Act 1989 and Intelligence Services Act 1994.

r the extreme secrecy of the British government<sup>35</sup>. Security and intelligence services are always kept insulated from direct ministerial dictation and parliamentary oversight on the pretext to prevent political manipulation.<sup>36</sup> But it is threatened with potential alienation and practical emancipation of those services<sup>37</sup>.

A free market - one of the main democratic freedoms is reflected also in the area of the special services. In the USA there is a significant role of private institutions and persons in the process of creating the shape and planning the modification in the area of the special services' activity.<sup>38</sup>

In totalitarian states centralized government system resulted in the same kind of centralization of the special services with the main aim of protecting the ruling elite against its opponents.

In Russia the centralized system of Tsar power resulted in the centralized system of political police, subordinate personally to Tsar. This political police popularly called Ochrana had its origins in the Tsar Ivan's secret service called "oprychnina" in the XVI century.<sup>39</sup> The modern political police system in Russia was created by Tsar Nicholas I, who - in 1826 - called into existence the Third Branch of the Personal Chancellery of the Tsar of Russia and the Military Police Corps. But this dualism was artificial, because of the personal union of the heads of those two services.<sup>40</sup>

The Third Branch was liquidated in 1880 by Tsar Alexander II as an element of his liberalization program. The political police was transferred to the Police Department of the Ministry of the Internal Affairs. But shortly after those reforms, Tsar was killed by the terrorists. His successor, Alexander III rejected almost all reforms, especially in the area of political repression. In August of 1881 he promulgated the decree "On the measures of protecting the state and social order". This decree created the rightly Ochrana or precisely so called sections on the protection of the state order. Initially this decree had to be valid only for 3 years, but was in force till the February Revolution in 1917.<sup>41</sup> Also initially those Ochrana sections were created only in the most revolutionary cities - in Moscow, St. Petersburg and Warsaw, but later the Ochrana system was expanded on the all Tsar Empire.<sup>42</sup> Since its beginning Oc

---

<sup>35</sup> Laurence Lustgarten, Ian Leigh "In From the Cold", Oxford 1994, pg. 413.

<sup>36</sup> Ibidem, pg. 414.

<sup>37</sup> According to Peter Wright, former high rank MI5 officer, right oriented officers of this service were conspiring against Labour Cabinet, especially against prime Minister Wilson - Peter Wright - "Jowca szpiegów", Warsaw, pg. 325-327.

<sup>38</sup> After the Second World War the new U.S. services were created according to recommendation made by a study group commissioned by Navy Secretary (James Forrestal) and chaired by private businessman (Ferdinand Eberstadt). Their report (autumn 1945) were to influence significantly the content of National Security Act of 1947. After a year since the CIA was created, there were two initiatives invited private persons to examine the CIA structure and activities. Firstly in January 1948 National Security Council asked three New York lawyers (Allen Dulles, William Jackson and Matthias Correa) to examine the CIA. Their report submitted after in January 1949 was very critical. The second example was the Congress decision to establish "The Commission on Organization of the Executive Branch of the Government" and its chairman established the sub-group for the examination of the security and intelligence organizations. This group was chaired by the New York businessman Ferdinand Eberstadt and submitted the critical report too. "The Evolution of the U.S. Intelligence Community", in: "Preparing for the 21st Century. An Appraisal of the U.S. Intelligence Community", 1996, pg. 8.

<sup>39</sup> Ludwik Bazylow, Historia Rosji, Vol.I, Warsaw, 1983, pg. 196.

<sup>40</sup> The Chief of the Third Branch was also a chief of the Military Police Corps. His deputy was also the Chief of Staff of the Military Police Corps. Albert Potocki, "Raporty szpiegów", Warsaw 1973, Vol. I, pg. 32.

<sup>41</sup> Ludwik Bazylow, Historia Rosji, t.II, Warsaw, 1983, pg. 387.

<sup>42</sup> Formally Ochrana was administrated by the Special Branch (created in 1898) in the Police Department of the Ministry of Internal Affairs. - W.K. Agafonow, Zagarnicznaja ochranka (Sostawleno po siekrietnym dokumienatam Zagarnicznej agentury i Diepartamenta Policji). S priioienijem oczerka "Jewno Azef" i piksa siekrietnych satrudnikow zagarnicznej agentury." Pio trogryd 1918, pg. 385.



hrana operated outside Russia, which had its reason in the strong Russian revolutionary emigration.<sup>43</sup>

After the February Revolution in 1917, new so called "Temporary Government" liquidated the Ochrana, creating special commission for the screening its archives.<sup>44</sup> But just in a year, after the Communist revolution, the new secret political police was created. Its name CheKa (CZEKA) became a symbol of the most terrible political repression system in the world. CheKa derived its operational methods from the Ochrana experience, especially in the area of foreign intelligence and police provocation. The centralized Communist system was reflected in the shape of the special services - from CheKa to KGB. Those services integrated into one structure foreign intelligence, civilian counterintelligence, military counterintelligence, security service, investigative service, auxiliary services.<sup>45</sup> The political nature of the Soviet special services was reflected not only in its crimes and terror but also in the names of the services. Between 1922 -1923 Soviet special services were officially named as the State Political Direction (GPU), between 1923 -1934 - the United State Political Direction (OGPU)<sup>46</sup>

Although the Communist and Nazi political police systems were at the first sight similar, there were big differences between them. In the USSR all former state institutions were liquidated and new structures were build. All state was controlled by the Communist party and there were no differences between party and state. In the Nazi Germany the state and the Nazi party were formally separated. In effect Soviet special services were with no doubt services of the state not of the party. There were always a part of government structure. Party fully controlled them but those services were formally separated from the party apparatus. In the Third Reich Nazi party (NSDAP) had its own security services, later one security service - the Security Service of the SS (SD SS). Although later SD gained control over the state security system by integrated with them in one Main Office of the State Security (RSHA), it was all the time formally a special service of the Nazi party.

One of the reasons of this difference between the USSR and the Nazi Germany (the Third Reich) was fact that Nazi special services had been created before Hitler gained the power in Germany. In the USSR communists created their special services after revolution, not before it.<sup>47</sup>

---

<sup>43</sup> Ibidem, pg. 40 - Just in 1881 was created the Ochrana Foreign Bureau in Paris, formally named "The Representation of the Interior Ministry for the contacts with foreign governments and Russian missions abroad.

<sup>44</sup> Andrzej Garlicki - "Archiwum Ochrany w The Hoover Institute", w "Historia XIX i XX wieku. Studia i szkice". Warsaw 1979, pg. 59

<sup>45</sup> Christopher Andrew, Oleg Gordijewski - "KGB", Warsaw, 1997, pg. 646-647.

<sup>46</sup> "Encyklopedia szpiegostwa", Warsaw 1995, pg.101.

<sup>47</sup> CheKa was created on 20.12.1917, after less than two months after bolshevick's revolution. <sup>47</sup> (Ch. Andrews, O. Gordijewski, KGB, op. cit., pg. 43), The Nazi security apparatus had its origins in the 1923 when the SS was created. In 1929 Heinrich Himmler was promoted to the post of the SS chief (reichsfuehrer SS). And in 1931 Richard Heydrich organized the security service of the SS - SD SS Heinrich Himmler's depositions on the trial in International Military Court in Nuremberg, Vol .XXI X, Nuremberg 1948, p.222, doc. 1992. SD (Sicherheitsdienst) which mixed the intelligence and political police functions, with its own informers network outside and inside the country was a peak of nazi police state pyramid. For many years SD was hidden in the structure of Gestapo (The Secret State Police) shade. But in fact the Gestapo and RSHA (The Main Office of State Security) were fully controlled and run by the SD.

<sup>47</sup> The most important steps were the personal union of the SS and hole German police (1936) and the creation of the Main Office of the State Security (RSHA) - 1939. Between those dates, in 1938 Hitler ordered all German policemen to became the members of the SS. It resulted in the politicization of the hole German police - criminal and security. The Main Office of the Reich Security (RSHA) was created (September 27, 1939) inside the internal ministry as the superior institution for the both parts of the German Police. In RSHA there were three Offices - Administration and Law, Political Police and Criminal Police.

In effect the Nazi party special services were superior to the state services and The Third Reich was the unique example - even among totalitarian regimes - of the politicization of state security services. The SD - organized in 1931 as the internal security service of the Nazi party became a central organization of the German security system.<sup>48</sup>

The process of the nazification and centralization of the Hitler's Germany was reflected in the politicization and centralization of the German security police structure.<sup>49</sup> As the Nazi party absorbed millions of former non-Nazi Germans, so the SD adopted a part of the former political police apparatus, of course after the Nazi screening procedures.<sup>50</sup> SD monopoly (a part of the Nazi monopoly) was confirmed by the liquidation of the separate Nazi secret services.<sup>51</sup>

Totalitarianism was a significant feature of the Nazi regime and its armed tool - the SD. The SD played a main role in the nazification of the German police legal regulations as the NSDAP in the nazification of the all state.<sup>52</sup> For its beginnings the organizational structure of this service represented efforts to monitor and control as much as possible parts of human life - in Germany and abroad. The foreign tasks which later led to the intelligence monopoly of the SD began from the efforts to control foreign liaisons of the internal opposition.<sup>53</sup>

In the USRR and its European satellites after 1945 the security apparatus was without doubt an element of the state structures. Of course party was superior to the all state machinery but formally was separated from the security services.<sup>54</sup> The state

---

<sup>48</sup>The most important steps were the personal union of the SS and whole German police (1936) and the creation of the Main Office of the State Security (RSHA) - 1939. Between those dates, in 1938 Hitler ordered all German policemen to become the members of the SS. It resulted in the politicization of the whole German police - criminal and security. The Main Office of the Reich Security (RSHA) was created (September 27, 1939) inside the internal ministry as the superior institution for the both parts of the German Police. In RSHA there were three Offices - Administration and Law, Political Police and Criminal Police. Alvin Ramme - "SD - Siu'iba Bezpieczestwa SS", Warsaw, 1984, pg. 30 - 73.

<sup>49</sup>Until 1933 the police authority was the land's competencies. The political police in each land was a part of the regional police apparatus. After 1933 Hitler began to organize the united political police. The first step toward the totalitarian state was a German President Executive Order in the name of the protection of the State and its citizens. According to this order the land's police authority were liquidated and were given to the central government - it means for Hitler and NSDAP. The second step was a evolution of the each political police branch in each land in separate political police authority, each of them formally headed by the same man - Heinrich Himmler, the SS chief. 17.06.1936 Himmler SS Reichsfuror was nominated by Hitler for the post of the German Police Chief. Himmler on 26.06.1936 divided German Police into two parts - the security police and the criminal police. The security police directed the political and criminal police and was run by Heydrich. The Regulation of the Reich's President "On the protection of the nation and the state». 1934, Reichsgestzblatt, Berlin 1933, part.I, Nor. 17, pg. 83.

<sup>50</sup>(Future Gestapo chief Heinrich Mueller joined the Nazi this way). The increasing role of the SD in the state police system reflected course in the increasing position inside SS. In 9.11.1933 the SD central apparatus was awarded with the higher rank - it became the fifth Office of the SS - called the Security Office. Later it became the RSHA. The Gestapo itself was created by the SD members or collaborators. If the older employees of the Gestapo came from the former German police, the new staff was completely recruited from the SD. In many lands the local SD heads also headed the state political police. Until the Himmler's nomination to the post of the German police chief (17.06.1936), land's political police formally acted according to the local regulations, but in fact were completely controlled by the SD SS. Alvin Ramme, op. pg. 30 -73. Walter Schelenberg, "Wspomnienia" (The Labyrinth. Memoirs), Wroclaw, 1987, pg. 5 -28.

<sup>51</sup>Each group in the NSDAP had its own security and intelligence staff. In the Nazi party there were at least 4 services - Foreign Organization of the NSDAP (Auslandorganization), Ministry of the Foreign Affairs, NSDAP's Office for The Colonial Policy (das Kolonialpolitische Amt der NSDAP) and of course - SD SS and SA. But after the unification of the party and Rohm's execution those services were liquidated and personnel joined the SD. On 09.06.1934 Hitler's deputy Rudolf Hess issued special order proclaiming SD as the only Nazi secret service. The civilian intelligence service inside the Foreign Ministry was included to the SD. Ramme, op. cit. pg. 42-48.

<sup>52</sup>The institutional union of the Main Security Office and The Main Security Office of the SS was the final step in the unification process of the German police and the Nazi party security apparatus. Until the RSHA creation Heydrich was the chief of the state security police and the chief of the SD, but those functions were formally separated. After the creation of the RSHA Heydrich was formally named as the security police and SD chief. Another words the creation of the RSHA under the Heydrich's executive was a formation of the situation after 17.06.1937 when SD chief Heydrich was nominated to the post of the state security chief. Ramme, op. cit., pg. 73, Schelenberg, op. cit., pg. 5 -28.

<sup>53</sup>Schelenberg, op., cit., pg. 63 -83., Reinhard Gehlen, "Tajna sluzba v akci", Praha 1994, pg. 12.

<sup>54</sup>For example data about politicization of the Polish security structures 1944-1983: Communist party (PZPR) members in the Civic Militia (MO):1945 - 9 %, 1946- 39 %, 1947 - 78 %, 1948 - 90 %, 1983 - 70 %, of MO and 90 % of SB. Statistics data fr

character of the Soviet and others Communist services reflected in their names - the National Commissariat of Internal Affairs (NKVD), the United State Political Direction (OGPU), The Committee of the State Security (KGB), State security (StB), etc.

But of course there were some differences in various countries. In Czechoslovakia in the years 1945 - 1948 there was a coalition government consisted of western-oriented politicians from the government in exile and from Moscow-oriented communists. This division of power was reflected also in the division of the special services. There were four such services - two civilian (Zemske odbory bezpecnosti II (ZOB II) - Land's security branches (non-Communist) and communist-dominated Statni bezpecnost (StB) - State Security) and two military (vojenske obranne zpravodajstvi (OBZ) - military counterintelligence dominated by communists and vojenska zpravodajska služba (2. oddeleni hlavniho stabu MNO) - military intelligence service/ The Second Branch of the General Staff loyal to the former government in exile and president Edvard Benes).<sup>55</sup> The OBZ was created in the Czechoslovak Communist Army in USSR. Its structure, regulations and operation methods were taken from Soviet NKVD and GRU regulations. Due to it and in oppose to the Czechoslovak tradition OBZ had a right to conduct investigations, to arrest people and to house searching.<sup>56</sup> Military intelligence service was the continuation of the prewar military intelligence commanding by the famous general Frantisek Moravec. This service had no police authority and was prohibit from working inside the country.<sup>57</sup> Because of this ban, the Communist ZBO could control all Czechoslovak Army.<sup>58</sup> In 1947 communists managed to reconstruct the Internal Ministry by incorporating ZOB II to the communist-dominated StB.<sup>59</sup> In 1948 after the coup d'etat communists took all power in the Czechoslovakia. The communist-dominated ZOB and StB participated in this coup. Just after 1948 arrived some Soviet advisers. In 1952, they helped to create the new structure of the Czechoslovak special services, on the KGB model. The new StB united in one structure intelligence, military and civilian counterintelligence, security service, protection of the economy, investigative branch and auxiliary services.<sup>60</sup>

After Communist coup d'etat general Moravec and other former military intelligence officers organized the anti-Communist intelligence service in exile. named Czechoslovak Intelligence Organization - CIO", (code name MEASURE), cooperating with the British intelligence service MI 6.<sup>61</sup>

Polish communists as their Czechoslovak comrades were also planning and organizing their security structures just under the Nazi occupation.<sup>62</sup> After 1944 communists took all power in Poland and just from the beginning they started to organize their security apparatus. Its Soviet model structure had been changing depending on

---

from the Personnel Department of the Ministry of Internal Affairs, in: "Organy bezpieczeństwa i porządku publicznego PRL", Zenon Jakubowski, Zarząd Polityczno-Wychowawczy MSW PRL, Warszawa 1984., pg. 31-32.

<sup>55</sup> Frantisek Hanzlik - Unor 1948 - vyldek nerovneho zapasu. Tajne sluzby na ceste k moci." Praha 1997., pg. 8.

<sup>56</sup> Ibidem, pg.18-23.

<sup>57</sup> Ibidem, pg. 86.

<sup>58</sup> Jiri Solo - "Ve sluzbach prezidenta." Praha 1994, pg. 229.

<sup>59</sup> Ibidem, pg. 180.

<sup>60</sup> Josef Frolik - "Spion vypoviada", Praha 1990, pg. 232-235.

<sup>61</sup> Jiri Solo - "Ve sluzbach prezidenta", op.cit. pg. 238.

<sup>62</sup> In 1944 the NKVD organized the special training course for the 217 polish communists from the Polish Army in USSR. The second source of the communist security cadre was communist conspiracy in Poland. - in: Zbigniew Kalaniecki, Ryszard Musiai "Rozwój organizacyjny i zmiany strukturalne SB w latach 1944-1979 - w świetle teorii i praktyki operacyjnej SB" - Kwartalnik Wyższej Szkoły Oficerskiej im. Feliksa Dzierżyńskiego 3 (17) 1979.pg. 30

political external factors (Soviet orders) and political internal factors (inter-party fights, changes in the administrative system in the country). Those factors acted in parallel and that's why it is hard to isolate the single factor of each structural change. In general the main impact was put by the Russian orders and suggestions. This structure had united in one apparatus all civilian intelligence, counterintelligence, investigative and security services. The only difference from the Soviet model was the existence of the military counterintelligence within the Army, not within civilian security service.<sup>63</sup> There were four periods of the existence of the Communist security system in Poland:

1/ - 1944-1954 - when security structures were fully dominated and managed by the Soviet advisers.<sup>64</sup> In this time the Soviet model Ministry of the Public Security (MBP) existed. The MBP mixed the functions of the traditional Ministry of Internal Affairs with the special services' functions. The Ministry was dominated by the security service which controlled also the criminal police (MO). Local ministry branches were called Office of the Public Security and were commanded by the security service officers. The commanders of the criminal police sections were only the deputies of those security chiefs. This centralization, unification and politicization of the security and police apparatus reflected the Stalin's time atmosphere.<sup>65</sup> Communist Party (Polish United Workers' Party - PZPR) tried to control all security apparatus by creating the special PZPR commission on security affairs.<sup>66</sup>

2/ - 1954-1956 - in this period the security service called Committee on the Public Security (KBP) was separated from the Ministry of Internal Affairs. In 1954, after Stalin's death the Ministry of the Public Security (MBP) was liquidated and police (Civic Militia - MO) was transferred to the Ministry of Internal Affairs. The KBP was formally a part of Ministers' Council. It was managed by the collegial commission.<sup>67</sup> This reflected the situation in the Communist party and debility of the First Secretary position.

3/ - 1957-1983. After the collapse of the liberalization trials called "Polish October" in the end of 1956 the retaliatory apparatus was again centralized in one structure. But as the party was trying to erase the Stalin's repression from remembrance so this time - opposite to the 1944 the security service was reunited with the police in the structure of the Ministry of Internal Affairs. It was a tendency to hide the existence of the special services (especially security service), placing it within the ordinary police (MO). Local security service's chiefs became formally the deputies of the commandants of local Police (MO) Commands. But in fact they were fully independent from them and strictly subordinate to the central security apparatus in Warsaw in the Ministry of Internal Affairs.<sup>68</sup> This reflected domination of the Security Service (SB) in the country. In 1975 the new administrative structure of the country changed the territorial structure of security service.<sup>69</sup>

---

<sup>63</sup> Christopher Andrew, Oleg Gordijewski, "KGB", op. cit.,

<sup>64</sup> There were at least 300 Soviet advisers on the different levels. Beside this about 6,9 % of the Polish security high rank officers were Russian, Ukrainian or Belorussian nationality. 9,4 % were the members of the Soviet Communist Party (WKP (b) or KPZR) - Andrzej Paczkowski - "Dzieci Feliksa Edmundowicza - Związek Radziecki a polski aparat bezpieczeństwa w latach 1944-1956" Rzeczpospolita, 27-28.01.1996.

<sup>65</sup> The Protocol from the session of the Political Bureau of the Communist Party (PZPR), 23.10.1948.

<sup>66</sup> "Dokumenty do dziejów PRL, Aparat bezpieczeństwa w latach 1944-1956. Part II, Warsaw 1996, pg. 18-21.

<sup>67</sup> Zbigniew Kalaniecki, Ryszard Musiał "Rozwój organizacyjny i zmiany strukturalne SB w latach 1944-1979 - w świetle teorii i praktyki operacyjnej SB" - Kwartalnik Wyższej Szkoły Oficerskiej im. Feliksa Dzierżyńskiego 3 (17) 1979.pg. 37

<sup>68</sup> Rozwój organizacyjny i zmiany strukturalne SB w latach 1944-1979 - op.cit. pg. 38-40

<sup>69</sup> Rozwój organizacyjny i zmiany strukturalne SB w latach 1944-1979 - op.cit. pg.40

4/ 1981 - 1989. The superior position of the security apparatus of the Ministry of Internal Affairs was reflected in its role during the Marshal Law (13.12.1981). Martial Law regulations gave the extreme power to the Ministry and its security service. This fact was strengthened by the close friendship between the dictator - general Wojciech Jaruzelski and the Minister, general Zdzisław Kiszczak, former military intelligence chief. His come to the Ministry of Internal Affairs reflected in the growing position as of the Ministry as former military security officers within it.<sup>70</sup>

The superior position of Minister Kiszczak was confirmed in 1983 by the Law on the Office of the Ministry of Internal Affairs. Due to it the Minister was a superior state organ in the area of the protection of the state security and public order. He had to perform those functions using Security Service -SB (state security) and Civic Militia - MO (public order). He had also its own internal military forces. The local Police Commands were replaced by the Offices of the Internal Affairs which duplicated the Ministry of Internal Affairs' structure. For the first time the Security Service was separate by Law from the MO, although it resided within the Ministry of Internal Affairs.<sup>71</sup>

In independent Poland after 1989 the political compromise between former communists and patriotic opposition put a big impact on the situation of the special services. Because of the evolutionary way of liquidation of the Communist system in Poland (So called the Round Table Agreements in 1989), the changes in the special services have been evolutionary to.

That is the reason why formally new civilian service (The Office of State Protection - UOP) has duplicated the structure and personnel of the former Security Service (SB). The changes have been rather slow but they have reflected the political changes in Poland:

1/ 1989 -1990 - the time of the internal changes of the Communist Security Service (SB).

Formally the Round Table Agreement had guaranteed the communists' control over main state apparatus - especially the Army, Security Service, foreign policy. The most repressive parts of the Security Service were liquidated. The new SB chief, colonel Jerzy Karpacz declared de-politicization of the service and<sup>72</sup> and limitation of its activity strictly to intelligence, counterintelligence and protection of the constitutional order.<sup>73</sup> The departments responsible for the control over Catholic Church and democratic opposition were liquidated. The number of SB personnel was also limited.<sup>74</sup>

Although the first half of the year - free parliamentary election won by Solidarity (04.06.1989) - had changed the political situation, the changes in Security Service took place in a year after. The parliament passed on the new Law on the Office of the

---

<sup>70</sup> "Generał Kiszczak mywi... prawie wszystko", Warsaw 1991

<sup>71</sup> Law of the 14 of July 1983, Dziennik Ustaw 1983, nr 38, poz. 172.

<sup>72</sup> (Konfrontacje, Nr 7-8/1991.

<sup>73</sup> In 1989 a 43 years old director of SB's Investigation Department was nominated to the post of the SB chief. Ibidem.

<sup>74</sup> Most of this SB officers were transferred to the police (MO), sometimes to the very high positions. (Gazeta Krakowska, 07.02.1990. According to the data released in 1999 on parliamentary request, about seven thousand of the former SB officers have been working in the Polish police. They have occupied about 7,5% of the highest police posts in Warsaw and 15 of 144 local police highest posts. *Życie warszawy*, 14/15.11.1998.

State Protection (UOP) on the 06.04.1990. But former SB chief, colonel Karpacz as a member of parliament influenced the shape of the new service.<sup>75</sup>

2/ 1990 -1991 - the liquidation of the SB and creation of the new service - UOP. Pursuant to Law on the Office of the State Protection Office (UOP), the SB had to be liquidated from the 10.05.1990. The new service (UOP) had to be created in a three months time as the separate office inside the Ministry of Internal Affairs. The Deputy Minister of Internal Affairs, Krzysztof Koziowski (former Catholic journalist) was nominated for the post of the Chief of the UOP. His deputy was former Solidarity activist Andrzej Milczanowski. But the candidature of the former Communist deputy Minister of internal Affairs Andrzej Gdula, was not accepted by the Solidarity<sup>76</sup>. It was the end of the formal communist's control over special services. But the personnel of this new service reflected the compromise between Solidarity and communists. A biggest part of UOP personnel was taken from the Security Service, of course after screening procedure.<sup>77</sup> Finally 10439 persons from the SB had received positive screening, 3595 - negative.<sup>78</sup>

The cooperation with the communists in the creation of the new service has been still criticized by the rightists.<sup>79</sup> But people organizing UOP have explained that they had to employ former SB specialists on the intelligence and counterintelligence, because there were no others<sup>80</sup>. In each department the proportion between old and new personnel were different<sup>81</sup>. Former SB officers have dominated in the intelligence and investigative departments but the local UOP offices were commanded by the new people<sup>82</sup>

3/ 1991-1993 - the first part of the Lech Waiksa's presidency was characterized by his big influence over UOP. According to the Communist Constitution which was still in act, and to later so called the Little Constitution Ministry of Internal Affairs with UOP within, Ministry of Defense and Foreign Ministry were separated from the government's prerogative as so called presidential ministries. This regulation reflected the time of the communists efforts to control the main sectors of the state during the political changes after the Round Table Agreements. After 1990 those regulations were causeless but Waiksa preserved them. Using those prerogative he was blocking all changes in the UOP structure, which could limit his power. He did it in

---

<sup>75</sup>Konfrontacje, Nr 7-8/1991.

<sup>76</sup>Gazeta Wyborcza, 11.05.1990.

<sup>77</sup> Initially Koziowski admitted that he want to employ only about 3000 people in UOP. Most of them he wanted to take from the SB, after screening procedure. This procedure was conducted according to the Law on UOP and the Ministry Council's resolution No 69/21.05.1990 The local and central commissions dominated by the Solidarity members screened all candidates to the new service coming from SB.. "Rzeczpospolita, 9.05.1991., Trybuna, 27.06.1990, Gazeta Poznanska, 13.05.1990.

<sup>78</sup>Rzeczpospolita, 9.05.1991

<sup>79</sup>Trybuna, 27.06.1990, Rzeczpospolita, 12 and 24.06.1997.

<sup>80</sup>Trybuna, 11.05.1990. According to the Deputy Chief of the UOP Jerzy Konieczny the training of the intelligence or counterintelligence specialist take about 10 years. Magazyn 997, 21.02.1993.

<sup>81</sup>Magazyn 997, 21.02.1993

<sup>82</sup> Local offices of the UOP in 1990: Szczecin - Jan Wesoiowski - legal adviser of the Solidarity,

Bydgoszcz - Zbigniew Nowek recommended by Solidarity, Katowice - Wojciech Szarama - Solidarity, Lublin - dr Adam Taracha - "Solidarity", Białystok - Krzysztof Bondaryk - "Solidarity", Rzeszyw - Michai Strkk - "Solidarity", Radom - Henryk Byzdra - "Solidarity", Kraków - Itcol. Tadeusz Rusak - from the Army, recommended by the Club of the Catholic Inteligentsia (KIK), Wrocław - col Ryszard Nowakowski - from the Army, recommended by the KIK, Poznań - col Antoni Franczyk - military judge, recommended by Solidarity, Olsztyn - mjr Tadeusz Wnóśnikowski - former army officer fired from the Army because of religious convictions, Gdansk - capt. Adam Hodysz - former SB officer, member of the Solidarity conspiracy, sentenced for it by communist for 6 years in prison, recommended by Solidarity - Wprost, 23.06.1991, Opole - mjr Edward Kuc, former SB officer - Trybuna Opolska, 24.01.1991.

spite of public declaration of UOP chiefs about the pathological character of the service's structure<sup>83</sup>.

Since 1990 there have been a few trials of changing the UOP structure.<sup>84</sup> Especially symptomatic were the reform trial in 1992-1993. Then there was a conception to isolate UOP from Ministry of Internal Affairs and create independent structure subordinate or to the president, or to the prime minister or to the special parliamentary commission. This last idea was an only theoretical one. The idea of this reform was to balance the president's and prime minister's influence in the area of the special services.<sup>85</sup> The authors of this conception were also thinking about the structural changes inside UOP, especially the separation of the intelligence service.<sup>86</sup>

The project of the Law on the isolation of UOP from the Internal Ministry had to come to the parliament in the Autumn 1992<sup>87</sup>. But on the 14.09.1992 the Political Advisory Committee of the Minister of Internal Affairs rejected this project.<sup>88</sup> The official explanation was the need to wait until the new Constitution would be passed.<sup>89</sup> But in fact it was only a verbalization of the president's Waiksa will. According to press release the Waiksa was afraid of losing the influence on UOP.<sup>90</sup>

4/ 1993-1995 - the period of cohabitation of president Waiksa with the post-Communist leftist government after parliamentary elections lost by the post-Solidarity parties. In this situation Waiksa needed a new UOP Chief, acceptable as by the post-communists as by the Western allies. He chose a colonel Gromosiaw Czempicki, former SB intelligence officer, famous for the successful operation in Iraq in 1990 which helped to save CIA secret agents.<sup>91</sup> But it was only a begging of the personal changes in UOP. Many former SB officers were nominated to the high posts, "new" people were dismissed or resigned on their own request.<sup>92</sup> Of course in this political situation there were no possibility to change UOP structure and subordination. In spite of it there were some proposals of changes. The most interesting one was to subordinate UOP to the parliamentary committee proportional to the political representation in the parliament.<sup>93</sup>

5/ 1995 -1997 - post-Communist rules. Waiksa lost the presidential elections in 1995 to the post-Communist candidate Aleksander Kwańiewski. This situation helped to change UOP subordination. Kwańiewski was not afraid of transferring UOP to his party colleague prime minister Włodzimierz Cimoszewicz.

---

<sup>83</sup> Magazyn 997, 03.01.1993, On 12.07.1992. during the commission hearings in Sejm, Minister of Internal Affairs and former UOP chief Andrzej Milczanowski called the ministry structure pathological because of the centralization of the intelligence, security and investigative functions in one body. *Życie Warszawy*, 14.07.1992, , The same view was expressed by the new UOP Chief Jerzy Konieczny, *Życie Warszawy*, 25-26.07.1992), and deputy minister of Internal Affairs Jerzy Zimowski, *Kurier Polski*, 28-30.08.1992

<sup>84</sup> *Gazeta Wyborcza*, 10.07.1992.

<sup>85</sup> According to the project UOP would be a independent central office directed by the minister, *Życie Warszawy*, 12 -14.07.1992.

<sup>86</sup> *Ibidem*.

<sup>87</sup> *Gazeta Wyborcza*, 10.07.1992.

<sup>88</sup> *Magazyn 997*, 03.01.1993

<sup>89</sup> *Magazyn 997*, 21.02.1993

<sup>90</sup> According to some papers the Konieczny's trials to change the UOP subordination were one of the reasons of his dismissal in 1993, *Wprost*, 28.11.1993.

<sup>91</sup> *Ibidem*.

<sup>92</sup> UOP in Summer of 1994: Chief - general Czempicki (SB), Deputies - colonel Nyika (Solidarity), Skoria (SB), Intelligence - colonel Luks (SB), Counterintelligence - colonel Miodowicz (Solidarity), Investigations - colonel Fonfara (SB), Analysis -- captain Aduszkiewicz, *Sztandar Miodych*, 08.12.1993,.

<sup>93</sup> *Siowo Polskie*, 15.06.1994.

Also so called "Olin affair" put a big impact of the structural changes in Polish special services. When the Minister of Internal Affairs and Waiksa follower Andrzej Milczanowski had accused the post-Communist Prime Minister Jyzef Oleksy of being a Russian spy, almost everybody in Poland understood that the concentration of power in the hands of the Minister of Internal Affairs could be dangerous for democracy. In effect UOP was taken off from the Internal Ministry and subordinated directly to the Prime Minister (new premier Minister, because Jyzef Oleksy had to resign although the accusations weren't confirmed by the prosecutor).<sup>94</sup>

President Kwańniewski had agreed to loose so called president's ministries, and in the Constitution, all governmental institutions were subordinate to the Prime Minister.<sup>95</sup> The UOP was transferred from the Ministry of Internal Affairs and became an independent institution under the direct Prime Minister's oversight. According to the new regulations the Prime Minister can nominate a special minister-coordinator to control the special services on his behalf. The Special Services' Secretariat was created in the Chancellery of the Prime Minister. Besides it, for the oversight purpose, College for the Special Services which grouped the main ministers and the president's delegates was created.<sup>96</sup>

6/ 1997 till now - the cohabitation of the post-Communist president with the post-Solidarity government. After the parliamentary election in 1997 victorious post-Solidarity parties - AWS and UW - came to power. New government replaced almost all chiefs of the UOP departments and local offices who had SB connections. President and post-Communist opposition have protested against those changes.<sup>97</sup>

In the post-Communist Russia, as in Poland, the special services were treated as the presidential organs, formally and directly subordinated to president Yeltsin. According to the Russian Constitution president has a power to concede services' statutes and structure. Services' chiefs are direct subordinated to president, with no subordination to the prime minister. Besides it the changes in the services are rapid and sometimes shocking. Although the services are formally decentralized they are fully controlled by Yeltsin and his administration.

The KGB wasn't liquidated but rather divided into separate services. Although after the collapse of KGB plot in August 1991 Gorbachov and Yeltsin were eager to liquidate KGB and create completely new service, this idea was finally rejected. According to press release this was present prime minister and the then chief of the Soviet Supreme Council for defense and security matters, Sergey Stiepaszyn who proposed to divide KGB into several separate services.<sup>98</sup> In result if in USSR were two special services - KGB and military intelligence (GRU), in nowadays Russia there have been at least 9: Federal Security Service (FSB), the Foreign Intelligence Service (SVR), the Federal Agency for Governmental Communications and Information (FAPS), The Main Guarding Directorate (GUO), the President's Security Service (SBP

---

<sup>94</sup> Polityka, 05.06.1999., "Biaia Ksika", Warsaw 1997.

<sup>95</sup> The Constitution of the Polish Republic, 1997.

<sup>96</sup> The College consists of the Ministers of Internal Affairs, Foreign Affairs, Defense, UOP' Chief, military intelligence (WSI) chief and the Secretary of the president's National Security Council. - The Law on UOP of 1990 with amendments from 1995, Article 4, also Gazeta Wyborcza, 12.01.1999.

<sup>97</sup> According to the former Minister-Coordinator of the special services, Zbigniew SiemNętkowski, right government fired almost 500 former SB officers, who were working in the UOP (10 % of the UOP's staff). Trybuna, 24.06.1998, Rzeczpospolita 24.06.1998.

<sup>98</sup> (Argiumenty i Fakty, 28/97)



), the Frontier Service (FSG), the Tax Service, the Custom Service, all of them subordinate directly to Yeltsin.<sup>99</sup> But of course the political situation in the country has been reflected in the area of special services:

1/liquidation of the KGB and later USSR after the collapse of the Yanayev plot in August 1991 in parallel to the fight between Soviet President Michaii Gorbachov and Russian President Boris Yeltsin about the control over special services - August - December 1991.

The disintegration of the KGB had to be a guarantee to avoid any new antidemocratic plots as Yanayev's one.<sup>100</sup> But it is obvious that initially there were no constructive ideas about the KGB's successors.<sup>101</sup> Yeltsin and Gorbachov were fighting about the control over the KGB parts, but Russian President was also continuing to create his own Russian services.<sup>102</sup>

2/ The fight between president Yeltsin and Supreme Council (Russian Parliament) about the control over special services - January 1991 - October 1993. During this period of time parliament tried to manage the special services directly and president Yeltsin tried to create the centralized security and police structure by the unification of the Russian Federal Security Agency with the Ministry of Internal Affairs in one big super-ministry called Ministry of the Security of Russia. Both trials were unsuccessful.<sup>103</sup>

3/ President's Yeltsin total control over special services - 1994-1997.<sup>104</sup>

After the failed rebellion of the Supreme Council, victorious Yeltsin liquidated the Ministry of Security of Russia (MBR), because of its officers' involvement in this revolt. He created the Federal Counterintelligence Service (FSK). Yeltsin disarmed FSK depriving it of the investigative authorities and of the military special forces. The Investigative Department was transferred to the prosecutor office. All of MBR employees were fired and those who were willing to work in the FSK were screened by the special commission. The FSK employed about 75 thousands of people - about

---

<sup>99</sup> OSW on TV RTR, TV ORT, Swoboda, TASS, Interfax, PAP, 06-07.12.1998.

<sup>100</sup> The USSR Supreme Council Law on Liquidation of the KGB (03.12.1991).

<sup>101</sup> The first collision was on 30 of September 1991, the when two opposite decrees on KGB were announced. In first of the president Gorbachov nominated Yevgeny Primakov to the post of the Chief of the First Main KGB's Directorate (foreign intelligence) under president's direct supervision. In the same time Yeltsin's tried to subdue him all KGB structures on the Russian territory. (Russian President's Decree No 130, of 30.09.1991. On the 11 of October 1991 The Gorbachov's State Council declared the liquidation of the KGB But according to the Soviet Constitution such decision should be confirm by the all presidents of the Soviet Republic, including Yeltsin. In this situation Gorbachov's State Council confirm the exclusive jurisdiction of the presidents of the soviet republics over local KGB offices. Gorbachov was trying to safe his jurisdiction over soviet federal security structures, by the creation of the Central Intelligence Service (Soviet President's Decree No UP-2883/25.11.1991 and Interrepublican Security Service (Soviet President's Decree No UP-2890/28.11.1991. But Gorbachov had no real power to exact his decrees. This was Yeltsin who had this power and he transferred the Russian KGB into the Russian Federal Security Agency (Russian President's Decree No 233/26.11.1991. The next Yeltsin's decrees subdued the Gorbachov's Interrepublican Security Service to the Russian Federal Security Agency (Russian President's Decree on 19.12.1991) and united Gorbachov's Central Intelligence Service with the Russian Foreign Intelligence Service (SVR) (Russian President's Decree on 18.12.1991.

<sup>102</sup> Russian President's Decree on 06.05.1991.

<sup>103</sup> This fight started with the Yeltsin's decree in January 1992 uniting the Russian Federal Security Agency with the Ministry of Internal Affairs in one Ministry of the Security of Russia.. This decree was criticized as the attempt to create Stalin's style terror apparatus, even for the protection of the democracy purpose. The Constitutional Court rejected Yeltsin's decree as anti-constitutional. Yeltsin had annulled his decree and promulgated a new one transforming the Federal Security Agency into Ministry of the Security of Russia. (Russian President's Decree No 42/24.01.1992). In February 1992 The Russian Supreme Council (parliament) made an effort to establish its total control over special services. (The Supreme Council Declaration of 21.02.1992. Yeltsin refused to confirm this declaration and subdued himself all Russian services (Russian President's Decree of 25.02.1992.)

<sup>104</sup> Next changes in the Russian special services took place in the end of 1993, as a result of the failed parliament's coup d'etat and the liquidation of the Supreme Council.. Because of the disloyalty of the some ministry of the Security of Russia officers Yeltsin liquidated this ministry and create the new Federal Counterintelligence Service

30 to 50 % of the MBR staff.<sup>105</sup> But those reforms were annulled very fast and just in the November, 1994, the FSK got back its investigative authority and special forces Alfa and Vypiel, mainly because of situation in Chechnya.<sup>106</sup>

In 1995 Russian parliament (Duma) passed the Law "On Organs of the Federal Security Service in the Russian Federation".<sup>107</sup> Among other wide authorities of the Federal Security Service (FSB) this Law reflected the federal structure of the Russian Federation. According to the Article 2. of this Law "FSB organs represent a united centralized system, which includes: the Russian Federation FSB; directorates (departments) of the Russian Federation FSB for individual regions and components of the Russian Federation (territorial security organs)".<sup>108</sup> This tendency was confirmed by the Yeltsin decree on the structure of the FSB. The position and role of the Russian capital resulted in fact that chief of the Moscow Directorate of the FSB has been also the Deputy Director of the all FSB.<sup>109</sup>

The Law on the FSB reflected also a dominant position of the president Yeltsin. The first (and main) FSB duty is to "brief the president of the Russian Federation, the prime minister and on their instructions, the federal organs of state power also Russian Federation components' organs of state power on threats to the security of the Russian Federation". The other duties (for example detection of the espionage) are clearly subordinate to this one.<sup>110</sup>

The specific element of this period was the extension of the separate special services inside the Kremlin's administration - The Main Guarding Directorate (GUO) and President's Security Service (SBP).<sup>111</sup> The two presidential decrees on 28.07.1995 were construed as the effort to create the superior structure over all Russian special services.<sup>112</sup>

4/ the agony of the Yeltsin's system - since 1997 till now. Yeltsin has been permanently ill since the 1996. During this period some ambitious politicians have tried to take the special services off his control. For example the deputy Prime Minister and Minister of Internal Affairs general Anatoly Kulikov had tried to take control over all kind of investigative and enforcement activities in Russia by creating of the special coordination commission headed by him.<sup>113</sup> In effect Kulikov lost his post. Similar ambitions were manifested by the General Prosecutor Yuri Skuratov, who also lost his job thanks to the special services provocation.<sup>114</sup> Also famous banker Boris Berezovsky tried to create his own special service.<sup>115</sup> When general Andrey Nykolayev

---

<sup>105</sup> Andrzej Grajewski, *Tarcza i miecz. Rosyjskie siły specjalne 1991-1998* (Shield and Knight. Russian Special Services 1991-1998), Warsaw 1998, pg. 63.

<sup>106</sup> Russian President's Decree "On the Creation of the FSB's Department of Investigation", of 23.11.1994.

<sup>107</sup> Russian Federation Federal Law No. 40 - FZ, "On Organs of the Federal Security Service in the Russian Federation,

<sup>108</sup> Ibidem Article 2 on "The system of FSB Organs.

<sup>109</sup> President's Decree No 515/22.05.1997 "On the structure of the Federal Security Service in the Russian Federation», 14 May 1997 Siewodnia,

<sup>110</sup> Russian Federation Federal Law No. 40 - FZ "On Organs of the Federal Security Service in the Russian Federation, Article No 1 and later.

<sup>111</sup> If the GUO (the successor of the KGB's Ninth Main Directorate) acted according to the Law from the 1993, the SBP was created by unpublished Yeltsin's decree of 13.11.1993 - Kommersant - Daily, 2/1995.

<sup>112</sup> According to one of those decrees SBP became a part of the president's administration, and this new administration could takeover other state institutions after government. (Russian President's Decree No 774/28.07.1995 and No 773/28.07.1995.

<sup>113</sup> (Izvestia, 15.10.1997)

<sup>114</sup> TV RTR, TV ORT, Radio Moscow, Interfax, 1997.10.29,

<sup>115</sup> Berezovsky as the Executive Secretary of the Commonwealth of the Independent States (CIS) proposed to create separate CIS's special services. OSW on TASS, Interfax, PAP, <http://www.nns.ru>, 22-23.01.1999, ....

tried to transform his Frontier Service (FSG) into the new KGB<sup>116</sup>, he not only lost his job but also FSG was subordinated to the Federal Security Service.<sup>117</sup> Also National-Communist opposition have been still postulating to rebuild the KGB, of course free from the pro-Democratic persons and under communist's control.<sup>118</sup>

The continuing decentralization of the Russian state resulted in structural changes in the FSB. On the 06 of October, 1998 President Yeltsin advanced the chief of the FSB Directorate in St. Petersburg to the rank of the Deputy Director of FSB.<sup>119</sup>

The commercialization of the Russian politics is reflected in the commercialization of the foreign communication intelligence. The creation of FAPSI - Federal Agency for Governmental Communications and Information - is an unusually clear, if not unique example. A strictly classified organization, entitled to conduct foreign intelligence activity, it is also a business with a right to lease communications facilities to foreign investors, invest in foreign commercial entities and set up companies abroad.<sup>120</sup> FAPSI also has joint stock company with the famous Russian politician Constanty Borovoy, who was involved in the mysterious death of Dzochar Dudayev.<sup>121</sup> Also Federal Security Service (FSB) has offered its service to foreign investors.<sup>122</sup>

### **Chapter III. The degree of the special service's involvement into politics as the measure of the strength of the state.**

Special services have extraordinary powers in order to protect the state and nation. But because of those powers, they are capable to destroy the democratic freedoms and even democracy itself.<sup>123</sup> The tension between special services and democratic freedoms poses vital questions for the democratic order.<sup>124</sup> According to Lustgarten and Leigh (*In from the Cold*), "for the weaker the state the more it needs to have recourse to extreme measures to preserve its existence; though by doing so, the more it is likely to act oppressively and thus alienate its citizens. Strong states by c

---

<sup>116</sup> According to Interfax Nikolayev tried to transfer FSG into new KGB with its various special service and armed forces (even fleet and air forces). Nikolayev's FSG had its own intelligence and counterintelligence services which operated also inside Russia. 1997.12.20. Interfax

<sup>117</sup> Yeltsin fired Nikolayev on 19 of December 1997. Siewodnia, 27.01.1998.

<sup>118</sup> Russian Liberal-Democratic Party (LDPR) lead by Vladimir Zyrinovsky presented its own proposal of the Law "On the Russian security organs", rejected by the Russian parliament (Duma) on 30.10.1997. LDPR planned to unite all main services (SVR, FSB, and FAPSI) in one Ministry of the State Security. TV ORT, Radio Moscow, TASS, 30.10.1997

<sup>119</sup> 1998.10.06, TASS, Interfax

<sup>120</sup> James Sherr - Russia, Geopolitics and Crime, Conflict Studies Research Center, R.M.A. Sandhurst, F-49, February 1995 p.7.

<sup>121</sup> Borovoy and FAPSI have shares in the Joint Stock Company Relkom - the main Russian e-mail operator. Andrzej Grajewski, *Tarcza i miecz. Rosyjskie siły specjalne 1991-1998 (Shield and Knight. Russian Special Services 1991-1998)*, Warszawa 1998, pg. 171-172.

<sup>122</sup> During his visit to Germany the then FSB Chief Nikolay Kovaliov proposed the security guarantees for German investors in Russia. This would be the task of the special FSB's branch for the protection of the foreign investors. (Siewodnia, 31.10.1997.

<sup>123</sup> Lustgarten and Leigh, op. cit., pg. 364.

<sup>124</sup> Thomas I. Emerson, *National Security and Civil Liberties*, op. cit., pg. .1.

contrast can endure constant dissent and argument and even periodic turbulence, with equanimity".<sup>125</sup>

According to those thesis weak state has an extended internal security apparatus, opposite to the strong state. Of course the final estimation of the level of the security service's involvement into public life depends on the level of control and oversight over those services and their activity.

The security services operate in the most of the democratic states and most of them are especially controlled by the government (and sometimes parliamentary) commissions. For example in Germany the Federal Office for the Protection of the Constitution (BfV) is responsible for domestic state security in all areas, exempt in the armed forces.<sup>126</sup> The Federal Office for the Protection of the Constitution and local state offices are intelligence services with only domestic tasks and authorities. Their original task is to collect and evaluate intelligence not only about foreign intelligence activities, but also about activities against the constitution. This last kind of intelligence is gained mainly from open sources, for example papers and documents published about or by the organization under observation.<sup>127</sup> BfV activity is controlled by two special oversight bodies - The Parliamentary Control Committee (PKK) and G10 complex.<sup>128</sup>

In Great Britain Security Service (MI 5) has in its tasks also the protection "against threats from actions intend to overthrow or undermine parliamentary democracy by political, industrial or violent means."<sup>129</sup>

In totalitarian states special services act mainly for the political reasons. For example the Russian Ochrana was above all political police service, with the limited intelligence tasks. Also Military Police Corps was aimed at the political opposition.<sup>130</sup> The Ochrana collected and evolved intelligence about social views and individual political activity. This system consisted of two main category of informers - agents of the external and internal service<sup>131</sup>. External agents spied on persons and houses. For example the housekeepers were obliged to inform police about their tenants. The information from this spy network were evaluated by the Ochrana analysts. But the most important were informers and provocateurs inside revolutionary movement<sup>132</sup>. The Ochrana often used provocation and deception in its effort to infiltrate and control the radical groups.<sup>133</sup>

In the previous chapter I was writing about the politicization or rather nazification of the Third Reich security system. It should be added that this politicization was r

---

<sup>125</sup>Laurence Lustgarten and Ian Leigh op. cit. pg. 4.

<sup>126</sup> The creation of the BfV was a result of the German experience of the Third Reich and the Weimar Republic. During that time the first democratic constitution in German history was misused by radical communist and Nazi groups and eventually overthrown. After the II World War the Soviet control over East Germany result in efforts to infiltrate and destroy the democratic system in the Western Germany. There were also some Nazi groups trying to organize into right-wing parties. Those reasons underpinned the need to create the BfV in 1949. - Harald Nielsen, "The German Analysis and Assessment System", in: "Intelligence Analysis and Assessment", p.55-56.

<sup>127</sup> Ibidem, p.57.

<sup>128</sup> Ibidem, p.55.

<sup>129</sup> Security Service Act 1989, (1989 c.5)

<sup>130</sup> Ludwik Bazyłow, Historia Rosji, t.I, pg.196., Warsaw, 1983.

<sup>131</sup>W.K. Agafonow, "Zagarnicznaja ochranka (Sostawleno po siekrietnym dokumienatam Zagranicznej agentury i Diepartamenta Policji). S priioienijem oczerka "Jewno Azef" i piksa siekrietnych satrudnikow zagranicznej agentury." Piotrogrzyd 1918, pg. 385.

<sup>132</sup>Ibidem, p.202

<sup>133</sup> Ibidem, p..40

reflected in the totalitarian tasks of those services, dominated by the Security Service of the SS - formally a part of the NSDAP apparatus. The structure of the Main Office of the State Security tried to monitor and control all aspects of the German life - as well political, economic, social, cultural as even sexual.<sup>134</sup>

The political functions of Soviet special services and their crimes are well described and portrayed in literature. Those political functions were even more important in the Soviet controlled regimes in Eastern Europe after 1944. Those countries did not have their own foreign and defense policy so they didn't need big intelligence services. Those limited intelligence services were merely a satellite operation of the Soviet KGB First Main Directorate. As an auxiliary part of the Soviet intelligence system Eastern intelligence services had gathered, political information on Western countries and political emigrants. For example in Communist Poland, intelligence service was for the all time a part of security service.<sup>135</sup>

After 1944 The duties of the security apparatus were hidden in the Civic Militia duties. In official communist's statements during the World War II the repressive tasks of the MO were masked by the slogans of fighting the Nazi collaborators and Gestapo agents and protect the common security.<sup>136</sup> But in internal communist's documents the true names were used - Special Branch or Security Branch.<sup>137</sup>

The first structure of the Polish security apparatus after 1944 - the Department (later Ministry) of Public Security (RBP, later MBP), consisted of two branches - First political-operational and Second - logistic.<sup>138</sup> Later This First department was divided into separate branches.

The main political and operational tasks of the RBP/MBP were to identify, isolate and then eliminate so called "class foes" - every opponents or even non followers of the Communist regime. This tasks came from the conception of the so called "class struggle".<sup>139</sup> The security organs were obliged to book every class foes and then to elaborate them.<sup>140</sup> There were 23 categories of class foes and hostile elements - from the active members of the anti-Communist underground to the former political activists, businessmen, rich farmers, emigrants and immigrants, noblemen, prewar officers, policemen and ordinary criminals.<sup>141</sup>

---

<sup>134</sup> Although all RSHA structures had political tasks, main activity in this area was conducted by the Third Office (domain of life in Germany with specification for four groups: Culture, Nation, Social and Economic Life), the Fourth Office (fighting enemies - viz., communism, emigrants, ethnic minorities) and the Fifth Office (ordinary crimes including homosexuals) - Alwin Rammme - Siuiba bezpieczeŃstwa SS", Warszawa, 1984, scheme No 2.

<sup>135</sup> Instruction No 006/70, Part 1, 2., in "Tajni Wspypracownicy", Warszawa, 1995, pg. 26.

<sup>136</sup> Project of the programmatic declaration of the communist Polish National Committee in USSR (November - December 1943), in: "KsztaŃtowanie siŃ podstaw programowych PPR w latach 1942-1945, Warsaw 1958, pg. 477: "Committee has to guarantee the democratic rules of right. Liquidate all Nazi agents. Expel from public posts all Nazi's collaborators, judge the territories and organize the citizens militia to protect the common security». In communist Polish Peoples Republic (PRL) the Law on Polish Committee of National Liberation" on 21.07.1944 authorized the creation of the Polish Committee of National Liberation (PKWN) and with the department of the Public Security inside.

<sup>137</sup> On the first session of the underground, communist National Council there was a proposal to create the Special Branch inside the communist Peoples Army (AL) to liquidate opponents of the communist and Soviet conspiracy inside Polish society. Finally this Special Branch (VI Branch) was created inside the AL's Main Staff. ..

<sup>138</sup> The First Department conducted all operational activity of the service. By the April 1945 the minister of the Public Security had created the special central and local branches "for fighting the banditry" with main task to infiltrate and liquidate anti-Communist conspiracy - The Minister of Public Security Order No 16/20.04.1945.

<sup>139</sup> See Chapter I of this paper.

<sup>140</sup> The Deputy Chief's of the RBP Regulation on the registration of the hostile elements, of 05.12.1945, The Chief's of the MBP Instruction on the registration of the war criminals, of 27.03.1945.

<sup>141</sup> MBP's Instruction No 1/21.01.1949.

The tasks of the Committee on the Public Security (KBP) - created in 1954 - were formulated as the protection of the peoples democracy (the official name for the Communist system in Poland).<sup>142</sup> The specific tasks of the KBP were described as "struggle with capitalistic intelligence activity connecting with the activity of intelligence activity of the reactive (anti-Communist) emigration groups, struggle with the remainders of the reactive underground, struggle with efforts to create illegal organizations and struggle with its political and terrorist activity, struggle with the hostile activity of the German revisionists, struggle with the diversion, sabotage and wrecking made by the enemy on the national economy."<sup>143</sup> KBP successor - the security service of the Ministry of the Internal Affairs had the same tasks.<sup>144</sup> They were specified in the security service's internal regulations as the prevention of the hostile activity, active and systematic identification of the hostile acting persons, groups and centers and detection of the perpetrators of crimes against the state".<sup>145</sup>

Undoubtedly, two Departments of the security service in the Ministry of the Internal Affairs - the Third Department (political opposition) and Fourth (Church) were a typical political police.<sup>146</sup> Their tasks were specified as the identification, detection and liquidation of the anti-Socialistic activity against the constitutional order. The third Department had also to "provide prophylactic protection of the problems, social environments and objects from those hostile activity". Those problems, social environments and objects meant science, culture, art, media, books, health care, tourism, sport, scientists, journalists, artists, students, ethnic minorities, central institutions".<sup>147</sup> It remains the tasks and structure of Nazi RSHA.

According to Article No 2, part. 1, of the Law on the Ministry of Internal Affairs Office (14.07.1983) described its tasks as the "protection of the state security, detection of the acts against constitutional principles of the Poland Peoples Republic."<sup>148</sup> This task was specified in 8 points describing the totalitarian character of this service and its political activity in Poland and abroad.<sup>149</sup> This Law and later internal regulations sanctioned the security service's invasion in the all aspects of the Polish life

In post-Totalitarian states the problem of protection of the constitutional order is especially a very fragile question. For example Polish Law on the Office of State Protection (UOP) doesn't clearly precise the tasks and authorities of this service in the area of the protection of the constitutional order. Although Article 1.1. of this Law described the purpose of creation of the Office as the protection of the state and its constitutional order, but those tasks aren't specified later among others specific duties of the Chief of the UOP. According to the Polish Constitutional practice it can

---

<sup>142</sup> The Government's Decree of 07.12.1954.

<sup>143</sup> The Government's Declaration No 830/54, of 07.12.1954.

<sup>144</sup> The Government's Declaration No 781/56.

<sup>145</sup> Instruction No 006/70, of 01.02.1970 Part 1..1., in: "Tajni Wspiypracownicy", Warsaw, 1995, pg. 25-26.

<sup>146</sup> The political tasks of the Security Service after 1956 were founded in the Law "On reconstruction of the central administration in the area of public security" (13.11.1956). The Government's Committee for the Public Security was liquidated and its duties were transferred (with people and structures) to the Ministry of Internal Affairs. In this Ministry the so called Security Service Line was created. According to the Minister of Internal Affairs Regulation No 0105/62 of 9.04.1962 the Third Department (responsible for the political problems) was divided into two Departments - Third - politics and Fourth - religion. In 1979 the Third Department was divided into Department III and Department III (The Minister of Internal Affairs Regulation No 039/79 of 01.05.1979)

<sup>147</sup> The Minister of Internal Affairs Regulation No 0025/79 of 15.06.1979, in: "Rola organów SB w ochronie interesów państwa przed infiltracją i wyrodkiem dywersyjnym państw imperialistycznych", w: "Problemy teorii i praktyki operacyjnej SB", Kwartalnik Wyższej Szkoły Oficerskiej SB, im. Feliksa Dzierżyńskiego, No 3/1979, pg. 69.

<sup>148</sup> Dziennik Ustaw 1983, No 38, pos. 172.

<sup>149</sup> The Government's Regulation of 18.08.1983, Dziennik Ustaw, 1983, nr 48, pos.216

be interpreted that UOP has no right to collect intelligence about political extremists before they commit any crime.

This unclearness about UOP duties and authorities has caused constant accusations of UOP illegal activity. It is a kind of irony that such accusations have been brought especially against UOP Bureau of Analyses and Information (BAiI).<sup>150</sup> Although the Bureau collected intelligence only from open sources, journalists and politicians accused BAiI of the constructing the spy network among them. UOP credibility was finally lost with the "Olin Affair"<sup>151</sup>.

Even in the Czech Republic after de-communization and lustration, new services with the limited number of the former StB officers have been regularly accused of the illegal political activity. According to some newspapers and politicians the Security Information Service (BSI) has intrigued not only against Czech politicians<sup>152</sup> but even against Bill Clifton.<sup>153</sup> The BSI was also accused of having diskettes with data about political parties and their members. It was suspected of using those data to bring discredit political opponents of the ruling party ODS.<sup>154</sup>

Also in Russia special services have been accused of continuing the KGB practice, even by the committing political crimes against Yeltsin opponents. But such press releases and even accusation made by the famous banker Boris Berezovsky<sup>155</sup> have not been verified by the independent Court. The political departments of KGB were not liquidated but renamed as the departments responsible for the protection of the constitutional order. What is significant, the former political policemen were promoted to the high level posts in the services.<sup>156</sup> It is also not so clear if the services have been manipulated by politicians or conversely. But with no doubt there is a problem of the presence of the former KGB and GRU officers in the Russian politics and economy.

This problem is connected with the general context of potential misuse of the former officers and informers of the former Communist services. It is both a problem of misuse them as by the new special services as by the veterans of the former services. The participation of the former Communist security officers in the new security structures and the attitude toward so called lustration - the screening of the former Communist special services' collaborators determine the situation of the post-Communist special services and its potential involvement into politics. Former Communist security services' officers have tendency to abuse the law and to intrigue.

---

<sup>150</sup> According to rightists politicians the BAiI's Instruction No 0015/93 would had included the permission to recruit informers in the political parties. UOP had rejected those accusations, but later annulled this Instruction.

<sup>151</sup> Affair with the accusations against prime minister Jyzef Oleksy of spying for Russia. Rzeczpospolita 25-26.07.1998

<sup>152</sup> Czech's special service BIS was accused of spying on the ODA Party - a coalition partner of the prime minister's Vaclav Klaus party ODS. (Rude Pravo, 02.02.1995) and socialdemocratic opposition (Gazeta Wyborcza, 30.01.1997), but those both accusations weren't confirm by the special commission.

<sup>153</sup> Former deputy director of the Czechoslovak Federal Security Information Service, Jaroslav Basta, stated that BIS was trying to bring discredit on Bill Clinton, collected information about his supposed potential liaisons with Communist secret services, based on fact that Clinton had been in Prague in 1970. (Lidove Noviny 11.01.1994)

<sup>154</sup> Lidove Noviny, No 36/1995.

<sup>155</sup> Berezovsky has accused FSB of trying to kill him and of creation special group of killers to murder him. Kommiresant Daily, 13.11.1998

<sup>156</sup> For example the new deputy chief of the FSB's "K" Directorate (Protection of the Constitutional Order), colonel Alexander Komiel-

kov, has to be responsible for the work of secret agents among journalists. Komielkov was working in the President's Security Service (SBP) and was responsible for the TV stations. According to Sevodna daily Komielkov owns the biggest data bank with most journalists' files. OSW on <http://www.nns.ru>, 12.10.1998.

In Poland in the middle of the 1990s about 60% of UOP personnel came from the Communist Security Service.<sup>157</sup> In the Czech Republic Communist StB was liquidated but even there former Communist specialists made up from 4 to 10 % of the new special services' staff.<sup>158</sup> In Russia about 80 % of the security and intelligence services employees have began their careers in KGB. The rest 20% have been recruited and trained by those 80 %.<sup>159</sup> Perhaps those figures explain best the differences in the level of the specific services' involvement into politics.

So called lustration of the former Communist SB collaborators was impossible in Poland for many years. Practically it has started just in 1999.<sup>160</sup> The early lustration attempt made by the rightist Jan Olszewski's government, finished with the collapse of the Cabinet, because of the president's Waiksa contraction.<sup>161</sup> Also the full access to the Communist services' files for the victims of this regime will be possible just in 1999 in effect of the Law on The Institute of the National Memory, which is modelled on the German Gauck Institute.<sup>162</sup>

The personal and operational continuance of the SB and UOP was a one of the main arguments against lustration and de-communization.<sup>163</sup> According to UOP chiefs, the lustration and de-communization could cause big damages to UOP.<sup>164</sup> The UOP and the Ministry of Internal Affairs refused to reveal any Communist collaborators because of at least 3 reasons. At first they wanted to avoid so called "witch-hunting" which could destabilize social order.<sup>165</sup> Second, UOP chiefs were called in question the credibility of SB files<sup>166</sup>. They were afraid of the possible manipulation and deception games made by the former Communist officers.<sup>167</sup> But of course, the main reason was the fact that lustration could frighten away UOP collaborators inherited from the SB.<sup>168</sup>

In the Czech Republic, in spite of fact that the lustration process has begun in 1991, there were also some doubts about the credibility of this procedure. There were some accusations that former opposition destroyed some Communist files after the collapse of the Communist regime, or started to use old spies for the new government's purposes.<sup>169</sup> Although those doubts according to the Lustration Law from the 04.10.1991, former security officers and collaborators can't tenure any public offices till the 2001.<sup>170</sup>

---

<sup>157</sup> According to the UOP's Chief Jerzy Konieczny (Polska Zbrojna, 15.12.1992), The same numbers were presented by the minister of internal affairs Andrzej Milczanowski (66% of the UOP staff). (Trybuna, 07.04.1993).

<sup>158</sup> According to Tomasz Svoboda, member of the Czech parliament: pronouncement on the conference "Security Services in Civil Society", Warsaw, July 1995.

<sup>159</sup> Vladimir Oivin, "Russian legislation on secret services: possibilities of control, Glasnost Foundation, Moscow, 1995, pg. 3.

<sup>160</sup> In spite of being passed first time in April 1997 - Ustawa lustracyjna z 11.04.1997.

<sup>161</sup> Obligated by the parliamentary declaration the minister of internal affairs presented the information on the SB's files in the UOP's and Ministry of the Internal Affairs disposal. Because of the revealing names of the main Polish politicians the government was accused of using the lustration as the weapon in political fights. ("Teczki czyli widmabezpieki", Warsaw 1992, pg. 79)

<sup>162</sup> Law on the Institute of the National Memory of 18.12.1998

<sup>163</sup> According to UOP Chief in 1992 Jerzy Konieczny (Polska Zbrojna, 15.12.1992)

<sup>164</sup> Konieczny, Magazyn 997, 21.02.1993.

<sup>165</sup> Minister of Internal Affairs in 1990, Krzysztof Koziowski: Gazeta Wyborcza, 19/20.05.1990.

<sup>166</sup> According to Milczanowski about 50% of the SB's operational files and about 60% of the personal files were destroyed by communists in the end of their regime. (Trybuna, 07.04.1993)

<sup>167</sup> According to Konieczny: Magazyn 997, 21.02.1993

<sup>168</sup> According to Konieczny Polish counterintelligence lost some sources in result of Macierewicz's lustration trial. Polska Zbrojna, 15.12.1992

<sup>169</sup> Rzeczpospolita. 30.01.1997

<sup>170</sup> Lustration Law of 04.10.1991, RC, 451/1991 Sb, Paragraph 1.



Although those bans, former StB officers have been playing an active role in the Czech economy. One of the biggest Czech oil companies, has been directed by the former Communist intelligence officer.<sup>171</sup> Another former StB and later FBIS officer was sentenced to three years in prison in 1994, for selling and revealing state secrets for the private Investing Fund.<sup>172</sup>

Also in Russia we cannot forget about KGB role in the creation of the Russian business elite. In January 1987 Vladimir Kryuchkov, then head of KGB foreign intelligence service and later to be its Chairman was admitted that "Our service has acquired strong position in the world of business, but it must show itself more effective in its approach to businessmen, on whom depend advanced contracts and access to leading edge technologies." He called for "the creation of mixed and small enterprises"<sup>173</sup>. According to American specialist James Sherr, after 1988 "the strong positions cited by Kryuchkov were given powerful reinforcement by several measures, viz., the creation of joint stock companies, commercial banks, commodity exchanges and the abolition of the state's monopoly over external trade: measures which the former KGB and its Komsomol protégés were quick to take advantage of and which do much to explain their prominent role in business at the present time."<sup>174</sup> Sherr also writes that Russian Foreign Intelligence Service (SVR) "states that a substantial proportion of 400 Generals who retired from KGB took leading positions in banks and joint ventures" and asks if the power of the KGB have been diluted or expanded?<sup>175</sup>

The last two years have brought new facts about KGB involvement in the Russian politics and economy. Former KGB and later Russian special services' officers, especially from its intelligence directorate had been promoted to the highest posts in the Russian state. The former Prime Minister Yevgeny Primakov and next Prime Minister Sergiey Stiepiaszyn started their careers in the Soviet secret services and have continued them in the Russian services. Stiepiaszyn was a KGB officer and later the FSB Chief, Primakov is accused of being KGB spy, but with no doubt he was running the Russian foreign intelligence service for at least 5 years.<sup>176</sup> Beside Primakov and Stiepiaszyn, the presidential administration has been managed by the two former KGB and later FSG and FSB officers - first by the general Nikolai Bordiuza, now by the FSB chief Vladimir Putin. There have been many other such nominations in the last two years. First wave of the nominations of former KGB officers was connected with the construction of the Sergiey Kyryenko Cabinet.<sup>177</sup> The second on

---

<sup>171</sup> The Chemapol's head Vaclav Junek was working for StB intelligence in Paris. The Economist, 24.01.1994.

<sup>172</sup> Vaclaw Walis sold state secrets to Victor Kozanny, head of the Harvard Capital and Consulting. *Życie Warszawy*, 13.12.1993 and 09/10.04,1994.

<sup>173</sup> Sherr James - "Russia, Geopolitics and Crime", Conflict Studies Research Center, Sandhurst 1995, pg. 2, on: "Activities of the Organs of State Security at the Present Stage Moscow, 1988 - from KGB documents released by the Gauskas Commission (Lithuania), cited in Françoise Thom - "Les Fins du Communisme", Paris, 1994, pg. 63.

<sup>174</sup> Sherr James... - op. cit., pg. 2

<sup>175</sup> Sherr James, op. cit., pg. 8.

<sup>176</sup> According to Ja-

ners Information Group Primakov is a former KGB high rank official, who was working abroad for this service for using code name "Maxim". Polish Press Agency - PAP, 1998.09.24. Primakov publicly denied any affiliation with the KGB, although he hinted that he was "not completely a novice". But in private talk with Yevgenia Albats he admitted that "No one wanted to work abroad go away without some contacts with the organs" - Yevgenia Albats - "KGB - State within a State", London 1992, pg. 306 Since the end of the 1991 till the beginning of the 1996 Primakov had been a Chief of the Russian foreign intelligence (SVR), than was nominated to the post of the Ministry of the Foreign Affairs, and since the summer 1998 till the May he was a Russian Prime Minister.

<sup>177</sup> The first wave of nominations of the former KGB officers had began in the Spring of 1998, after the dismissal of the Prime Minister Victor Chernomyrdin.. The former KGB officer and FSB Chief, responsible for the war in Chechnya was nominated to the post of Minister of Justice (PAP, 28.04.1998). On 25 of May 1998 former KGB officer and later deputy mayor of St. Pet

e was connected with the Primakov government.<sup>178</sup> The third has started with the Bordiuzha's nomination for the post of the Secretary of the presidential Security Council and the Chief of the Presidential Administration. It has already ended with the Stiepaszyn nomination for the post of prime minister<sup>179</sup>. Of course the motives of those nominations were different, but it is obvious, that President Yelstin has leaned his power on former KGB officers and structures.

In conclusion, in my opinion the Lustgarten's and Leigh's thesis about weak and strong state can be only partially confirmed in the East European terms. I agree that weak state has an extended internal security apparatus, opposite to the strong state. But in my opinion the final estimation of the level of the security service's involvement into public life depends on the level of control and oversight over those services and their activity. For example Polish special services have less authority in the area of the political security than German BfV. But it doesn't mean that Germany is a weaker state than Poland. But if we add to the Lustgarten's and Leigh's thesis that for the weaker the state the more it needs to have recourse to extreme and uncontrolled measures to preserve its existence the above theory will be fully confirmed by the facts.

## **Chapter IV. The Legal Mandate of the special services. This mandate defines the limits of services' responsibility, competencies, control and protection of human rights mechanisms.**

---

ersburg became the deputy Chairman of the Presidential Administration (TV RTR, TV ORT, Swoboda, BBC, TASS, Interfax, PAP 27.07.1998). Two months later he became the Director of the Federal Security Service (FSB) (PAP, 27.07.1998). On the 29 of March, 1999 he has become a Secretary of the Russian Security Council, keeping the post in FSB (TV RTR, TV ORT, Swoboda, BBC, TASS, Interfax, PAP 27.07.1998 and 1999.03.29, TV RTR, TV ORT, TASS, Interfax, PAP, <http://www.svoboda.org>, <http://www.nns.ru>, <http://www.dwelle.de>). On the 01 of June 1998 general Nikolay Patrushev became the Chief of the Main Control Office in the Presidential Administration (RTR, ORT, TASS, Interfax, 08.06.1998.) On the same day Alexey Molokov, former chief of the FSB Military Counterintelligence Directorate became a Deputy Secretary of the Security Council. For the post of the second Deputy of this Council was nominated Grigory Rapota from the Foreign Intelligence Service (TV RTR, TV ORT, Swoboda, TASS, Interfax, <http://www.nns.ru>, 27.11.1998.). Few weeks later former deputy chief of the FSB, Victor Zorin, became the chief of Special Programs Branch inside Presidential Administration (Interfax, 08.06.1998).

<sup>178</sup> The second wave of those nominations began with the creation of the Primakov's government. On the 14 of September former deputy chief of the SVR, Yuriy Zubakov became the chief of the Governmental Administration (TV RTR, TV ORT, TASS, Interfax, PAP, 14.09.1998.), On the same day Robert Makaryan, former adviser of the soviet and Russian intelligence chiefs, became a chief of the Primakov's Cabinet Office. (TV RTR, TV ORT, TASS, Interfax, PAP, 14.09.1998). On the 27 of November general Grigoryi Rapota became a chief of Russian Arm Trade Company Ross voruzeniye. Rapota replaced the FSB lieutenant colonel Yevgeny Ananyev (TV RTR, TV ORT, Swoboda, TASS, <http://www.svoboda.org>, 30.11.1998., TV RTR, 27.11.1998). In the beginning of 1999 Lev Koshlakov, former intelligence officer became a deputy chairman of Russian State's Radio-Television Company, who had been working in Austria as the APN correspondent (Siewodnia, 20.01.1999).. On the 25 of January 1999 intelligence general Yury Kobaladze became a deputy Chairman of the TASS Agency. From 1977 to 1984 Kobaladze had been working in London as the Soviet TV correspondent. (Swoboda, TASS, Interfax, PAP, 25.01.1999).

<sup>179</sup> Contemporaneously to Primakov's nomination, General Nikolay Bordiuzha from the Frontier Service became the Secretary of the Security Council (TV RTR, TV ORT, TASS, Interfax, PAP, 14.09.1998).. On the 7 of December, 1998 Bordiuzha became the Chief of the Presidential Administration keeping his former post (TV RTR, TV ORT, Swoboda, TASS, Interfax, PAP, 06-07.12.1998). He was dismissed on the 19 of March 1999., after the scandal with the resignation of General Prosecutor Yuriy Skuratov, (1999.03.19-20, TV RTR, TV ORT, TASS, Interfax, PAP, <http://www.svoboda.org>, <http://www.nns.ru>, <http://www.gazeta.ru>). On the 14 of April he became the Chief of the State Custom Office - another Russian special service (1999.04.14-15, TV RTR, TV ORT, TASS, Interfax, PAP). The Bordiuzha's deputy in the Presidential Administration was Vladimir Makarov, former KGB officer, later deputy Director of the FAPSI (TV RTR, TV ORT, Swoboda, TASS, Interfax, PAP, 06-07.12.1998.). On the 23 of December 1998 former FSB and GUO Chief general Mikhail Borsukov became a Chief of the Military Inspection in the Presidential Administration (Interfax, 23.12.1998)

If we have agreed that the special services activity in the area of the political and economic life should be controlled, we can assume that this control is impossible without legalization of the service's existence. This legal basis for the security services activity is needed in democracy, with its system of execution of law. In totalitarian states any regulations (if they even exist) are artificial and dead.

In democracy the legalization of the special services activity must be a compromise between legality and efficiency. The democratic state must find ways to exercise legal control that will not inhibit the legitimate and indispensable operations of the special services, but will also prevent the degeneration and alienation of those services.<sup>180</sup> But the idea that special services require any grounding in legality is of very recent vintage and still has only partly gained acceptance.<sup>181</sup> Most of the services owe their existence to circumstances of war, during which the normal legal order is suspended. For example until the 1990's the British government tried to maintain the bizarre fiction that security and intelligence services (MI 5 and MI 6) do not exist in peacetime.<sup>182</sup>

Other services (especially in totalitarian or post-totalitarian states) derive from political police forces, which are usually created in secrecy. That is the reason why both British, Soviet and Nazi services were acting with no legality grounds. But if we assume that the War in Europe ("hot" and "cold") has lasted in fact from 1914 to 1989 (excluding Balkans), then it will be clear why the process of legitimization of the special services has begun so late - in 1990.

The modern conception of legitimization of the special services activity derives from the United States and its legal tradition and separation of powers.<sup>183</sup> The Central Intelligence Agency has its statutory basis in the National Security Act of 1947.<sup>184</sup> Besides later events, the erosion of earlier consensus on foreign and internal policy and allegations of abuses on the part of security and intelligence agencies, helped fuel demands for the complete legalization of the special services existence and activity. The tendency to legalization of those services was a direct result of scandals in which most of the services were involved.<sup>185</sup>

In totalitarian states the legal basis is dispensable or secret. For example in the Third Reich, the creation and existence of the RSHA was kept in secret by the government and the Nazi Party.<sup>186</sup> Gestapo was formally in internal governmental and party contacts (in secret) named the Fourth Office of the RSHA, but in outside contacts

---

<sup>180</sup> Marek Nowicki (Helsinki Foundation for Human Rights, Poland) on the Conference "Security Services in Civil Society: Oversight and Accountability, Warsaw, July 1995.

<sup>181</sup> Lustgarten and Leigh, op. cit., pg. 374.

<sup>182</sup> MI 5 and MI 6 grew out of the military Secret Service Bureau in 1909. The latter began as the foreign section of this Bureau and worked closely with the Admiralty; the former was devoted to counterintelligence and staffed mostly by military officers - Lustgarten and Leigh, op. cit., pg. 374, also Congressional Research Service's Report for Congress on Intelligence Oversight in Selected Democracies, Washington 1990, pg. 1.

<sup>183</sup> According to Lustgarten and Leigh this separation of legislative and executive powers resulted in the fast legalization of the CIA activity in the National Security Act of 1947, Lustgarten and Leigh, op. cit., pg. 374.

<sup>184</sup> National Security Act of 1947, 50. U.S.C.

<sup>185</sup> It is proved both in the US with its developing legal framework in the area of the special services and in the rest of the democratic world. The parliamentary oversight on the US Intelligence Community and the acts acknowledging the existence of the British MI 5 and MI 6 owe their creation to the big scandals with security agencies. Scandal (which above all means embarrassment) has been the motor force for constitutional change in this area, to far greater effect than any principled concern for political freedom or constitutional propriety. Lustgarten and Leigh, op. cit., pg. 374.

<sup>186</sup> Alvin Ramme - SD SS, op. cit., pg. 126

and for the society, the name Gestapo was still in use. Also for many years the SD (Nazi party security service) was hidden in the structure of Gestapo (The Secret State Police). But in fact the Gestapo and RSHA (The Main Office of State Security) were fully controlled and run by the SD.<sup>187</sup> The strict organizational and personal unification of those two bodies - SD and Gestapo - produced many doubts about their relations. Even Intentional Criminal Military Court in Nuremberg had many problems with the clear limitation SD and Gestapo, which were united with the criminal police in one body called Security Police (Sicherpolizei).<sup>188</sup> Those differences were obvious in the intelligence matters. Only SD had a right to carry on foreign civilian intelligence (after the liquidation of military intelligence- and counterintelligence service (Abwehra), the SD was formally an only German intelligence service).<sup>189</sup> Formally the SD was only a intelligence service with executive branches. They weren't necessary because of the personal union between SD and the all German police, especially the Gestapo.

What is typical for the totalitarian regime, it is the unclearness of names. for example within the SD the forerunner of the future political police, was called The Special Culture Branch (Sonderreferat Kultur) and was responsible for collecting intelligence about anti-Nazi parties and groups inside Germany.<sup>190</sup> After 1934 the unification and centralization of the regional political police in one security police called Sipo, was backed by the growth of the SD competencies. It is paradox that the growing position of the SD was a result of the evolution of the German state to the Third Reich. They did not liquidate former police forces, but adopted them after screening so they did not trust them at all. The special political tasks could be performed only by the SD. That's why after 1934 the SD received more competencies.<sup>191</sup> So we can say that SD was a information service and Gestapo the political police.<sup>192</sup>

Also in the Communist Poland the full legal basis for the activity of the Security Service (SB) was created in 1983, only 6 years before the collapse of the Communist regime. Of course, the society was conscious of the existence of the security structures, but specific regulations were secret. The first communist's legal regulation, the Law on the Polish Committee of the National Liberation (PKWN), was illegal in a light of the prewar polish law. But communists were backed by the Soviet troops and they could neglect the polish law. The Law on the PKWN, sanctioned the creation of the Department of the Public Security.<sup>193</sup> At the beginning the security organs

---

<sup>187</sup>Ibidem, pg. 127.

<sup>188</sup>Ibidem, pg. 85

<sup>189</sup> It was a result of a long-time SD efforts to monopolize all aspects of the German intelligence and security. In February 1944 the military intelligence and counterintelligence service Abwehra was liquidated and its parts were transferred to the various institutions. But main Abwehra's branches (intelligence, counterintelligence and sabotage) were included in the Sixth Directorate of the RSHA (intelligence). This Directorate was a part of the SD structure and was administered by Walter Schellenberg, Brigadefuehrer of SS. Walter Schellenberg - Wspomnienia (The Labyrinth. Memoirs.), Wroclaw 1987, pg. 235.

<sup>190</sup> Alwin Ramme, op., cit., pg. 44

<sup>191</sup> For example after 1934 the SD was announced by Himmler, the Political Police Chief as the only domestic intelligence and counterintelligence service. The division of task between Gestapo and SD was simple - Gestapo was obliged to protect the nazi state and to fight its opponents and SD was fighting the ideological opponents of the Nazi ideology and was giving their names to Gestapo. In fact there was the on going process of the personal unification of the both services. According to the Reich Minister's of Internal Affairs executive order of 11.11.1938 the SD was acting on the state's order as the secret information service giving the state and party elite the basic information for their policy and for the political police. - Hitler's deputy Rudolf Hess' Regulation proclaiming SD SS as the only NSDAP security service, 09.06.1934, H. Buchheim, Die SS Staates, Vol. I, Munchen 1967, pg. 63-64., Martin Bormann's Regulation of 14.02.1935 on the same matter., Alwin Ramme, op. cit., pg. 288.,

and Hess' Regulation about the position of the SD - 14.12.1938, Ramme, op. cit., pg. 289.

<sup>192</sup> For example according to Heydrich's executive order from the 01.07.1937 SD was responsible for the (universal) problems and Gestapo for individual examples when the involving of the police executive measures was necessary.

<sup>193</sup> Law on the PKWN.

were hidden in the police structures.<sup>194</sup> There were not separate regulations on the security service, in all of them the only MO was mentioned. By the other side, according to the internal regulations, the MO was subordinate to security apparatus.<sup>195</sup> The Ministry of the Public Security (MBP), was created in 1945 uniting the security and police structures.<sup>196</sup> Paradoxically communists duplicated Nazi practice, of the subordination of the criminal police to the security service.

After the Stalin's death the Communist terror was limited, and the Ministry of the Public Security (MBP) was liquidated according to the Communist party decision, legalized by the government's regulation.<sup>197</sup> The MBP was replaced by the two ministries - the Ministry of the Internal Affairs (MSW) with police (MO) within and the Committee for the Public Security (KBP) under the collegial management. The KBP was "the government organ in the area of the public security" and was "entitled to protection of the peoples-democratic regime stated in Constitution". The KBP had to conduct - according to the state laws - fight with any kind of the activity aiming against peoples-democratic regime. The Chairman of the KBP was a member of the government and was nominated by the Parliament on the Prime Minister request.<sup>198</sup> But those regulations were dead, because the government and parliament were subordinate to the Communist party (PZPR). In 1954 government promulgated by the first time the separated (from the Civic Militia - MO) task of the security apparatus. The two Government's Decree on the service in the security and MO organs were promulgated on the 20 of July 1954.<sup>199</sup> The Public Security Organs were obliged to "protect the peoples-democratic regime stated in Constitution" another name for the protection of the internal and external security of the state and the party. The State Security Organs had to fight imperialistic spies, secret agents, saboteurs and other individuals seeking peoples-democratic regime and any kind of the activity against socialistic creation in Poland".<sup>200</sup>

On the 13 of December, 1956 KBP was liquidated and its tasks were transferred to the competence of the Minister of the Internal Affairs.<sup>201</sup> The retaliatory apparatus in Poland was again centralized, this time within the Ministry of Internal Affairs. On this occasion the name "Security Service of the Ministry of Internal Affairs" (SB MSW or shortly SB) was mentioned for the first time. Secondly local SB offices were hidden in the Civic Militia (MO) structure, but formally they were independent from the local police commandants. The each chief of the SB's local office was formally the deputy commandant of the local MO post, but he was also the independent administrative organ in the area of the public security.<sup>202</sup> In the Ministry of Internal Affairs in Warsaw, the central SB apparatus was a separate part of the Ministry, with its deputy minister.<sup>203</sup> This duality - another organization structure in Warsaw and another in the rest of the country - was caused by the fact, that the Ministry of Internal Affairs did not have any local offices. So the best way out of this difficulty was to hide local SB offices in the MO command posts. The second possibility was to plac

<sup>194</sup> PKWN Decree on the Civic Militia MO - communist police - Dziennik Ustaw RP z 1944, No 7, poz. 33.

<sup>195</sup> The Ministry of Public Security Order No 13/18.03.1949, Akta Archiwum MSW on 1949, No Ac-872/49.

<sup>196</sup> Aparat bezpieczeństwa w latach 1944-1956 (Security apparatus 1944-1956), Vol. I, Warsaw, 1994, pg. 12.

<sup>197</sup> Dziennik Ustaw z 1954, nr 54, poz.269.

<sup>198</sup> Dziennik Ustaw z 1954, nr 54, poz.269.

<sup>199</sup> The decree on the service in the MO organs ("O słuźbie w organach bezpieczeństwa publicznego") (Dziennik Ustaw No 34/1954, poz.142) and Decree "O Milicji Obywatelskiej" (Dziennik Ustaw No 34/1954, poz.143)

<sup>200</sup> Dziennik Ustaw nr34/1954, poz.142.

<sup>201</sup> Dziennik Ustaw z 1956, nr 54, poz 241

<sup>202</sup> MSW's Regulation No 0150/1957, z 27.07.1957.

<sup>203</sup> Government's Declaration No 830/54, z 07.12.1954

e SB local offices in the local state administration, but the first solution guaranteed better conspiracy of the SB activity. SB officers were also using MO documents and uniforms. This mess was complicated by the fact that SB had no separate service regulations, and used the MO regulations taken from the Law "On the Service in MO" of 1959.<sup>204</sup>

So between 1956-1983, the SB was acting on the basis of the Law of 13.11.1956 and of the unpublished Government's Declaration No781/56 of 13.12.1956. This Declaration specified the SB tasks, structure and names. The SB consisted of the three main departments - First (intelligence), Second (Counterintelligence), Third (struggle with anti-socialistic activity and protection of the economy). It is worth remembering that intelligence and counterintelligence departments were all the time the parts of the Security Service. Former Communist intelligence officers and their informers have been trying to neglect it.<sup>205</sup>

On the 14 of July 1983 the Law on the Office of the Minister of Internal Affairs, was passed by the parliament.<sup>206</sup> According to it the minister was the supreme state organ in the area of the protection of state security and public order. Its duties were divided between SB (protection of the state security) and MO (protection of the public order).

After the collapse of communism the State Protection Office was created. According to the law of 06 of April 1990 the UOP was established to protect the security of the state and its constitutional order. The main duties of the UOP are:

- 1/Identifying and counteracting perils to the security, defense, sovereignty, and integrity of the state.
- 2/ Preventing and detecting crimes of espionage and terrorism, as well as other major crimes against the State, and prosecuting their perpetrators.
- 3/ Identifying and counteracting violations of state secrets.
- 4/ Preparing reports and analyses vital to national security for the supreme bodies of state power and state administration.<sup>207</sup>

The Law does not state precisely the structure of UOP duties and tasks of the individual UOP services, so it is obvious that those UOP duties should be performed by the all services (intelligence, counterintelligence, investigation service, etc.). The structure of the UOP is promulgated by the Prime Minister. Initially the UOP was duplicating SB structure excluding "political" departments. It consisted of the First Directorate (intelligence), Second Directorate (counterintelligence) and Third Directorate (Investigations) and some auxiliary offices. In 1996 the Fourth Directorate responsible for the protection of the economy was created. The domination of the operational structures in UOP has been confirmed by the fact, that the Analysis Bureau has a lower formal status than other "main" directorates. The problems with the specification of UOP duties in the area of the protection of the constitutional order have been described above.<sup>208</sup>

Amidst the many changes, however, the Polish legislation retained one of the KGB's and SB most important structural principle: the UOP is a militarized organization

---

<sup>204</sup>Law of z 31.01.1959 "O stosunku siuŹbowym funkcjonariuszy MO", Dziennik Ustaw No12/1959, poz.69.

<sup>205</sup> Rzeczpospolita, 16.03.1999.

<sup>206</sup>Dziennik Ustaw 1983, No 38, poz. 172.

<sup>207</sup> Law on the State Protection Office of Ustawa o UOP, z 10.04.1990, Chapter I.

<sup>208</sup> Law on the Office of State Protection of April 1990, Dziennik Ustaw, No 30, Item 180, Chapter 1, Article 1.2.

.<sup>209</sup> The system of military ranks has been preserved, and monthly salaries consist of two parts: one for the post held and another for the rank. UOP officials believe that strict military hierarchy has been preserved to promote discipline among the officers.

In Russia according to the Yeltsin's Decree No 42 of the 24 of January, 1992, the Ministry of the Security of Russia had 25 duties, including protection of the sovereignty, integrity and defense capability of the state, but was responsible for the "realization of the rights, liberties and described by law interests of the individuals and security of society and the state."<sup>210</sup>

On 24 of February 1992 the Russian Supreme Council passed the Law "On investigative and enforcement activities in the Russian Federation". The Law's advantage was that it was the first such regulation in Russia. The Law granted the agencies, entitled to conduct investigative and enforcement activity in Russia. It prohibited to conduct such activity in the interest of any political party.<sup>211</sup> The Law also quarantined the social help and legal advice for the service's collaborators.<sup>212</sup> Although the Law guaranteed the citizen's right to access to information obtained about them by the special services, but in fact it was a dead article because of the lack of the executive regulations.<sup>213</sup>

The next Law on the Russian special services was passed on the 17 of July 1992. It was called "The law on Federal Security Organs". The law limited the tasks and authorities of the Ministry of the Security of Russia, but it didn't result in the liquidation of the structures which weren't mentioned in the Law. For example the Law neglected the existence of the Guarding Service (former KGB IX Directorate) and Federal Agency for Governmental Communication and Information - FAPSI (former KGB Eight Main Directorate). This Law annulled the previous Soviet Law "On the State Security Organs in the USSR"<sup>214</sup>, FAPSI and GUO existed apart from Law (FAPSI was legalized by the Yeltsin's Decree "On the Federal Governmental Communication and Information Organs" of 19.02.1993 and GUO by the Federal Law "On the state protection of the supreme power organs) of 28.04.1993).

The Law on the State Security Organs" also did not mention such KGB main tasks as protection of the constitutional order, control over foreign citizens visiting the country. The Law on the Foreign Intelligence Service (SVR) of the 11 of August 1992 permits this service to conduct intelligence activities in Russia.

After the failed rebellion of the Supreme Council, victorious Yeltsin liquidated the Ministry of Security of Russia (MBR) and created the Federal Counterintelligence Service (FSK) with limited duties. Yeltsin disarmed FSK depriving it of the investigative authorities and of the military special forces. The Investigative Department was transferred to the prosecutor office. FSK had also no right to conduct operational activity in the Russian Army. But those reforms were annulled very fast and just in

---

<sup>209</sup> Ibidem., Articles 39 and 91.1.

<sup>210</sup> Russian President's Decree No 42/92, z 24.01.1992

<sup>211</sup> Supreme Council's Law of 24.02.1992, part 7, art 5.

<sup>212</sup> Ibidem., art.16

<sup>213</sup> Ibidem, part 6, art. 5. It states that "the materials obtained as a result of the investigative and enforcement activities in relation to individuals whose guilt for committing a crime hasn't been proved in the order fixed by law are kept for a year and then destroyed, unless the execution of official duties or the law require otherwise".

<sup>214</sup> Soviet Supreme Council's Law of 16.05.1991.

the November, 1994, the FSK got back its investigative authority and special forces.<sup>215</sup> Those authorities have been finally sanctioned by the Law "On Organs of the Federal Security Service in the Russian Federation" adopted by the State Duma 22 February 1995 and signed by Yeltsin 03.04.1995.<sup>216</sup> This Law has been still valid. The Law reestablished the FSB obligation to safeguard within the bounds of their remit security within the Russian Armed Forces.<sup>217</sup> Because of the enumeration of the forces and services which are to be safeguarded by the FSB, we can suppose that FSB is not obliged to conduct such activity within the intelligence service (SVR), military intelligence (GRU), the Main Guarding Department (GUO).

The main FSB duties are to brief the president of the Russian Federation, and Prime Minister and on their instructions other state organs on threats to the security of the Russian Federation, detection of the espionage, terrorism, organized crime, etc.<sup>218</sup>

As it has been mentioned above, some Russian special services have been acting on the presidential decrees' basis. For example the President's Security Service (SBP) was created by the secret and unpublished Yeltsin's decree on the 13.11.1993.<sup>219</sup> Until 1995 the SBP was a part of the Main Guarding Department (GUO) which had its legal basis in the Federal Law on the state protection of the supreme power organs of the Russian Federation from 28.04.1993. But in 1995 the SBP was separated from the GUO.<sup>220</sup> But even if we assumed that the Law on GUO of 1993 had referred also to the SBP it would not mean that the all kinds of those services activity were legalized. According to this Law GUO (and eventually SBP) was obliged to forecast and detect the threats to the protected objects. But they were not obliged to conduct any investigative and enforcement activity, because they had not been mentioned in the Law "On investigative and enforcement activities in the Russian Federation" of 1992. This Law was amended only in 1995.<sup>221</sup> The existence of the SBP was finally sanctioned by the two Yeltsin's decrees of 28.07.1996. According to them SBP as a "state organ" became a part of the Presidential Administration (described as the another "state organ") with the superior power over GUO and the right to take "operational" control over other special services.<sup>222</sup> The political opposition protested against those decrees, because of the term "state organs" used in relation to the SBP and Presidential Administration. Russian Constitution did not mention any "state organs", but only "state organs of the executive, legislative and judicial powers". The Presidential Administration as well as SBP were only the executive instruments of the President not the "state organs of the executive power". But Yeltsin's position was so strong that he could reject those doubts and protests.<sup>223</sup>

---

<sup>215</sup> Russian President's Decree of 23.11.1994.

<sup>216</sup> Russian Federation Federal Law No. 40 - FZ "On Organs of the Federal Security Service in the Russian Federation,

<sup>217</sup> *Ibidem*, art. 12.

<sup>218</sup> *Ibidem*, art 8 and 12.

<sup>219</sup> Kommersant - Daily, no 2/1995

<sup>220</sup> A. Grajewski, *op. cit.*, pg.144.

<sup>221</sup> A. Grajewski, *op. cit.*, pg.143.

<sup>222</sup> Russian President's Decree No 774/28.07.1995 "On the Main Protection Directorate of the Russian Federation" and No 773/28.07.1995. "On the Administration of the President of Russian Federation".

<sup>223</sup> A. Grajewski, *op. cit.*, pg. 145.



## Chapter V. The system of oversight, control and accountability and the meaning of those concepts in the specific state.

The last and most important level of the protection against special services' abuses is oversight, control and accountability system. The democratic oversight over the special services is made in three ways: intergovernmental oversight, parliament oversight and public oversight. Usually the first oversight efforts are established within the governmental structures, than in parliament and at least at the public level (free access to information).

Those countries that have established significant mechanism of intelligence oversight fall into two general categories. The first group includes countries with independent, statutory oversight panels outside the executive branch or Cabinet structure. The second, includes countries that have established less formal oversight procedures limited to Cabinet supervision or subsumed in some broader parliamentary committee. There are of course significant differences in the extent of the oversight procedures. These differences are apparent in such quantitative or qualitative areas as the number of oversight mechanisms, scope of their responsibilities, and relative emphasis on supervision of domestic or external intelligence operations. A strong judicial underpinning is evident in the oversight mechanism established by English-speaking countries, probably reflecting the influence of British common law. Countries like Germany or Italy which have had experience with repressive police controls, have emphasized legislative aspects of oversight, probably as a check on any future acquisition of unwarranted power on the part of the security services. In general, none of these countries have gone as far as the USA in the number and scope of their intelligence oversight mechanism. The growth of intelligence oversight mechanism appears to represent a continuing trend. Nonetheless, the development of oversight mechanism is likely to be a gradual process. Further changes in intelligence oversight are likely to take place as part of a broader redefinition of intelligence goals and priorities in the future.<sup>1224</sup>

The idea of systematic parliamentary oversight of special services is relatively recent and owes a great deal to the US oversight practice. The American experience, were adopted in the other democracies. There were three main factors which caused the establishing mechanism for the special services oversight in the USA - the tradition of the parliamentary involvement in the planning of the national security policy, the conflict between the legality and effectiveness of the special services' actions and the wave of scandals in the middle of the 1970s.<sup>225</sup>

The special character of the relations between US. Congress and special services is a result of the strong position of the parliament in the US. constitutional system. U.S. Congress is vested by the Constitution with the responsibility to appropriate funds for the activities of the executive power, including intelligence activities.<sup>226</sup> Al

---

<sup>224</sup>"Intelligence Oversight in Selected Democracies", Congressional Research Service Report for Congress, Washington , 2 1.08.1990, Alfred B. Prados, Richard A. Best Jr., s.1: "

<sup>225</sup>"Intelligence Oversight in Selected Democracies", Congressional Research Service Report for Congress, Washington , 1 990, pg. .3., also James S. Van Wagenen - "A review of Congressional Oversight", in: "studies in Intelligence", Vol. 01, No 1, 1997, pg. 1.

<sup>226</sup> Legislative Oversight of Intelligence Activities: The U.S. Experience, Report prepared by the Select Committee on Intelligence United State Senate, Washington, October 1994, pg. 1.

so, since the beginning of the USA, Congress has been involved in the conduction of the intelligence activity in the interest of the foreign policy and national defense.<sup>227</sup> From the beginning, members of Congress tried to control and oversight the intelligence activity by obtaining an accounting of expenditures made from the President's secret intelligence fund. But those trials failed.<sup>228</sup>

Only in last 30 years Congress has managed to obtain an effective oversight and accountability system. The National Security Act of 1947 which established the framework for a national security structure, made little provision for legislative oversight. But in the 1950s. and 1960s. Congress didn't execute even those limited possibilities of oversight the special services.<sup>229</sup> In accordance with the prevailing perception of a need for secrecy in dealing with intelligence, congressional review of intelligence activity was conducted in a select and very limited environment - basically, by a small group of senior Members of each House - until the early 1970s.<sup>230</sup> While there were occasional proposals during the 1950s and 1960s to create special committees with responsibility for intelligence, none of those proposals was adopted by the Congress.<sup>231</sup> Meanwhile, President Eisenhower created an independent advisory board to review the performance of the intelligence community. This board has been continued by all but one of his successors as The President's Foreign Intelligence Advisory Board (PFIAB), charged with assessing "the quality, quantity and adequacy" of intelligence activity".<sup>232</sup> In the 1970s a series of scandals (including Watergate) led to creation of the effective parliamentary oversight system.<sup>233</sup> During 1975 and 1976 four investigative panels, including select committees from both Houses recommended the establishment of an intelligence oversight committee in the Senate and Congress with jurisdiction over intelligence budget authorization and other oversight responsibilities.<sup>234</sup> There are four such oversight committees (including PFIAB):

---

<sup>227</sup> During the Revolutionary War, the Second Continental Congress not only functioned as the government of the 13 rebellious colonies, but also planned, directed, and carried out intelligence activities in support of the war effort. In November of 1775, the Continental Congress created the Committee of Secret Correspondence for this purpose, and covert actions, use of secret writing, codes and ciphers, protection of sources, compartmentation, propaganda and deception. Of course also General George Washington commander of the Continental Army, recruited and run a number of agents, set up spy rings, devised secret methods of reporting, analyzed the raw intelligence gathered by his agents, and mounted an extensive campaign to deceive the British armies. In 1790 Congress established the Continental fund of Foreign Intercourse (also known as the Secret Service Fund) - "The Evolution of the U.S. Intelligence Community", do: "Preparing for the 21st Century. An Appraisal of the U.S. Intelligence Community", 1996, p. 1., James S. Van Wagenen - "A review of Congressional Oversight", in: "Studies in Intelligence", Vol. 01, No 1, 1997, pg.1.

<sup>228</sup> In one debate over this issue, Senator John Forsyth, later to become Secretary of State, declared:

"The experience of the Articles of Confederation having shown the necessity of secret confidential agencies in foreign countries, very early in the progress of the Federal Government, a fund was set apart, to be expended at the discretion of the President, on his responsibility only, for all purposes to which a secret service fund should or could be applied to the public benefit. For spies, if the gentleman pleases...". In 1846 Congress tried to oblige President James Polk to inform the House about specific expenditures from this fund. Polk refused saying that "In no nation is the application of such funds to be made public". James S. Wagenen, "A Review of Congressional Oversight", s.3, w: "Studies in Intelligence", Vol. 01, No 1/1992.

<sup>229</sup> "Intelligence Oversight in Selected Democracies.» Congressional Research Service Report for Congress, Washington, 2 1.09.1990., pg. 3., also Legislative Oversight on Intelligence Activities, op. cit., pg. 3.

<sup>230</sup> In 1956, small CIA subcommittees were created in the Armed Services and Appropriations Committees of each House; for the next 15 years review of intelligence activities took place almost exclusively in these subcommittees. "Intelligence Oversight in Selected Democracies.» op. cit. pg.3

<sup>231</sup> "Legislative Oversight of Intelligence Activities...» op. cit., pg. 3.

<sup>232</sup> "Legislative Oversight of Intelligence Activities...» op. cit., pg. 3 - 4.

<sup>233</sup> "Legislative Oversight of Intelligence Activities...» op. cit., pg. .3.

<sup>234</sup> These investigative bodies were::

1/ The Commission on CIA Activities Within the United States, known as the Rockefeller Commission after its Chairman Vice President David Rockefeller (January - June 1975)

2/In the Senate - the Committee to Study Governments Operations with Respect to Intelligence Activities, known as the Church Committee after its Chairman Senator Frank Church (January 1975 - April 1976),

3/ In the Congress - the Select Committee on Intelligence to Investigate Allegations of Illegal or Improper Activities of Federal Intelligence Agencies, known as the Pike Committee after its Chairman Congressman Otis Pike (February 1975 - January 1976),

The President's Intelligence Oversight Board - PIOB, created by the President Ford Executive Order in 1976. PIOB charged with reporting to the President any intelligence activity which a member believes to be "in violation of the Constitution or laws of the United States Executive Orders, or Presidential directives."<sup>235</sup>

The Senate Select Committee on Intelligence - SSCI, established by Senate Resolution 400 of May 19, 1976, charged with reviewing the "nature and extent of the intelligence activities of the various departments and agencies of the USA."<sup>236</sup>

The House Permanent Select Committee on Intelligence - HPSCI, established by the Congress Resolution 658 of July 14, 1977, charged with authorization of expenditures for national and tactical intelligence activities.<sup>237</sup> SSCI may consist of 19 members, HPSCI of 13 - 17.<sup>238</sup> It result in rapid growth of persons who have access to the secret intelligence information, although the selection of members is handled in a special manner, in compliance with the demands of national security.<sup>239</sup>

According to Lustgarten and Leigh, secrecy is an inseparable part of the special services' arbitrariness.<sup>240</sup> So the Report of the Senate Select Committee on Intelligence of 1994 said that "Access to information is the lifeblood of intelligence oversight".<sup>241</sup> Although there were initially some obstacles from the executive, especially CIA to obtain Senate's and Congress' committees with all secret information,<sup>242</sup> nowadays they are almost fully informed.<sup>243</sup> According to the Intelligence Oversight Act of 1980 (last amended in 1991) the heads of intelligence agencies shall furnish the oversight committees "any information or material concerning intelligence activities (...) which is in their custody or control and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities."<sup>244</sup>

The special U.S. experience is a public oversight over special services made by the use of the right on the free access to governmental information. Freedom of Information Act of 1966 (FOIA) have given citizens the right to obtain any information p

---

4/ In the Congress - the Commission on the Organization of the Government for the Conduct of Foreign Policy, known as the Murphy Commission after its Chairman, veteran diplomat Robert Murphy, (June 1975), In: "The Evolution of the U.S. Intelligence Community", do: "Preparing for the 21st Century. An Appraisal of the U.S. Intelligence Community", 1996, pg. 12.

<sup>235</sup> Executive Order 11905.

<sup>236</sup> Senate Resolution 400.

<sup>237</sup> House of Representatives Resolution 658.

<sup>238</sup> "Legislative Oversight of Intelligence Activities..." op. cit., pg. 7.

<sup>239</sup> Ibidem, pg. 7.

<sup>240</sup> Lustgarten and Leigh, op.cit., pg. 22

<sup>241</sup> " Access to Classified Information by Members of the United States Congress», Center for National Security Studies, 19.06.1995, pg. 1.

<sup>242</sup> "The precise extent of Congress' authority to obtain classified information from the President, and of the President's authority to withhold information from Congress, has never been definitely addressed by the Supreme Court and remains a matter of controversy. One view is that Congress is entitled to all national security information from the Executive Branch, except for a small subcategory of national security information that comes within the privilege protecting the President's personal deliberations. On the other hand, defenders of Executive Branch power argue that the President has much broader authority to refuse congressional requests. General principle of oversight and accountability require it to be fully informed by the executive power. The Congress's authority to obtain information from the Executive Branch is not explicitly established in the Constitution. Rather it stems from explicit constitutional grants of authority to Congress, including the power to legislate, to make all appropriations, and to confirm senior Presidential appointments." In: Access to Classified Information by Members of the United States Congress», Center for National Security Studies, 1995, pg.1 - 2.

<sup>243</sup> In practice, a large amount of information is routinely provided to the Houses, and most contentious requests for information are resolved by negotiation between the Houses and the President, in: Access to Classified Information by Members of the United States Congress», Center for National Security Studies, 19.06.1995, pg. 1

<sup>244</sup> The Intelligence Oversight Act 1991, sec. 502.

ossessed by the government, excluding some specific categories.<sup>245</sup> Although those exemptions enclose the national security information,<sup>246</sup> there are theoretical possibilities to obtain some of them from the intelligence and enforcement agencies. Those agencies are obliged by law to answer any request for information,<sup>247</sup> although the Director of Central Intelligence has a right to exempt operational files from the provisions of FOIA.<sup>248</sup>

The specific CIA rules of the answering the FOIA request are described in the internal CIA regulations.<sup>249</sup> According to the last released CIA Report about its administration of the FOIA, in 1996 the Agency received 6173 requests with the growing tendency.<sup>250</sup> According to Morton H. Halperin (*Intelligence in Open Society*) the CIA's obligation to respond FOIA requests was a "traumatic experience" for this intelligence agency, but after this initial shock, CIA discovered that much information of its files could be declassified and released following careful scrutiny.<sup>251</sup> Some CIA officials admitted that FOIA had improved the operational efficiency of the Agency.<sup>252</sup>

In totalitarian states the oversight system is limited to the internal procedure, or even does not exist at all. For example due to the Prussian State Ministry Act from the 10.02.1936 Gestapo was named as the highest power in this country. Its executive orders and activity were excluded from the courts control. There were no possibility to take any legal actions against Gestapo decisions.<sup>253</sup>

In Poland after 1944, the Communist propagandistic slogans about the direct rules of the peoples, caused some troubles with the legalization of the new security structures. Some communist's followers were trying to create so called Peoples Militia, Peoples Guard or Security Guard just within the collegial local legislative bodies called National Councils. It caused for the communists the danger of losing control over security apparatus. They were able to control the central executive power, but it was impossible to control all local national councils. Those controversy resulted in annulment of one of the Communist executive power decrees on the Civic Militia, because of its faulty description of the new security structure. Although the new

---

<sup>245</sup> The Freedom of Information Act, 5 U.S.C Sec. 552.

<sup>246</sup> The documents exempt as the national security information are those that are properly classified pursuant to a Presidential Executive Order. FOIA, op. cit., Last Executive Order On Classified National Security Information No 12958 was issued on 17 of April, 1995.

<sup>247</sup> FOIA, op. cit. Initially the Director of the Central Intelligence had a almost total authority to reject any request for the intelligence information from the citizens. But the after the decade of scandals, in 1976 Congress amended the FOIA by requiring the CIA to respond FOIA requests, although the Agency continued to have the authority to prohibit the release of the properly classified information. However, by late 1970s, the CIA's officials were persuaded that they needed substantial relief from the requirements of the FOIA. Ronald Reagan administration shared this view and proposed to exempt the entire intelligence community from the dictates of the FOIA. The Congress was refusing to exempt CIA from the FOIA dictates, unless it was convinced that the requirements of an open society as those of intelligence community were fully taken into account. So the Congress forced a dialogue between the intelligence community and the civil liberties community as represented by the American Liberties Union (ACLU). In May 1984, the CIA and the ACLU endorsed a bill (Central Intelligence Agency Information Act), that exempts certain of the CIA's operational files from the search and review requirements of the FOIA, but without altering the substantive standard for withholding material or changing the power of federal courts to review CIA actions relating to FOIA requests. - Morton H. Halperin, "Intelligence in an Open Society", 1985, pg. 6 - 7.

<sup>248</sup> CIA Information Act of 1984, H.R. 5164, Sec. 710. (a): "Operation files of the CIA may be exempted by the Director of Central Intelligence from the provision of section 552 of title 5, United States Code (Freedom of Information Act), which require publication or disclosure, or search or review in connection therewith".

<sup>249</sup> The last Interim Rule on this problem is dated on 29 May, 1997 - Interim Rule of the CIA: 32 Code of Federal Register (CFR), Part XIX, sec. 1900 and 1901. Director of Central Intelligence to facilitate the processing of administrative appeals under the FOIA established two administrative entities: Historical Records Policy Board (HRPB) and Agency Release Panel (ARP) - 32 Code of Federal Register (CFR), Chapter XIX, sec. 1900.41.

<sup>250</sup> "FOIA Annual Report to the Congress for the Calendar Year 1996", CIA 1997.

<sup>251</sup> Morton H. Halperin, op.cit., pg. 6.

<sup>252</sup> Morton H. Halperin, op.cit., pg. 6.

<sup>253</sup> H. Buchheim, Die SS-das Herrschaftsinstrument, in: Anatomie des SS-States, Vol. I, Munchen 1967, pg 47.

executive power - Polish Committee of the National Liberation (PKWN) included the function of the "Director of the Public Security Department - RBP"<sup>254</sup> the PKWN manifest called the National Councils to create the Civic Militia in aim to kept the order and security".<sup>255</sup> This mess was deepened by the fact that the Law on PKWN had not defined the tasks and duties of the Department of the Public Security. On 27 of July, 1944 the PKWN promulgated two decrees - first on the liquidation of the prewar Polish police<sup>256</sup> and second on the new Civic Militia (MO). But this last decree was not published in the Government Official Gazette, although both were passed by the Communist parliament - National Council (KRN). This decree established the MO as the "public security organ" subordinate each local offices to the local National Councils.<sup>257</sup> Although MO had to act due to RBP regulations, but their budgets would be controlled by the local National Councils.<sup>258</sup> So the decree on MO was not published and on the 07 of October a new one was promulgated by the PKWN.<sup>259</sup>

According to this new decree of 07.10.1944 National Councils had a right to exercise "social control" over MO activity in accordance with the Law on the National Councils of 11.09.1944 which authorized those councils to exercise such "public control" over all local state organs. The KRN Declaration of 25.06.1946 exempted the all investigation cases from the National Council's control authority. No control could be provided without permission from MO superiors from the security organs. So in fact this "social control" was limited to the right to listen the propagandistic speeches of the security service officials.

The local state administration heads had more authority in the area of public security. The heads of the Offices of Public Security (UBP) and MO commandants were obliged to inform heads of local administration about security situation on their terrain and to cooperate with them.<sup>260</sup> The head of the Province (Wojewoda) had formally a right "to look into work of the local public security organs in the state of emergency, if the delay would endanger the public interest".<sup>261</sup>

Created in 1954, the Committee of the Public Security (KBP) was directed by the Chairmen who was formally nominated by the Parliament on the Prime Minister request.<sup>262</sup> But those regulations were dead, because the government and parliament were subordinated to the Communist party (PZPR).

After 1956 the KBP was liquidated and security service were transferred to the Ministry of Internal Affairs. Local security organs were hidden within the MO structure. It resulted in the formal possibility of oversight by the National Councils, according to the decree of 1955 on the organization and sphere of MO's activity<sup>263</sup>. This formal problem was resolved by the legal construction, that as the decree and later re

---

<sup>254</sup> Law on the creation of the PKWN, of 21.07. 1944, Dziennik Ustaw, 1944, No 1, position 1.

<sup>255</sup> Dziennik Ustaw RP z 1944, no 1

<sup>256</sup> Dziennik Ustaw RP, 1944, no 2

<sup>257</sup> Dziennik Ustaw RP, z 1944, no.2, pos. 7 (unpublished), art.1.

<sup>258</sup> Ibidem, art.2.

<sup>259</sup> Dziennik Ustaw RP z 1944, No 7, pos. 33.

<sup>260</sup> The Minister's of Public Security Regulations No 11/11.04.1947 and No 38/27.04.1947,

<sup>260</sup> The Minister's of Public Security Regulation No 11/ 21.04.1947, The Archive of the Ministry of Internal Affairs on 1947, AF -1605/47.

<sup>261</sup> The Minister's of Public Security Regulation No 11/ 21.04.1947, The Archive of the Ministry of Internal Affairs on 1947, AF -450/47

<sup>262</sup> Dziennik Ustaw 1954, no 54, poz.269.

<sup>263</sup> The Decree of 21.12.1955 "On organization and limits of activity of the MO, Dziennik Ustaw nr46/1955, poz. 311.

gulations had mentioned only about control in the sphere of public order, than it did not refer to the public and state order.<sup>264</sup> In the same way the MO commandants' deputies for the public security matters were exempted from the consultative procedure of National Councils.<sup>265</sup>

The only effective control over Communist services was internal control conducted by the Communist party and the Ministry of Internal Affairs, and Security Service's Control Branch. The Supreme Control Chamber (NIK) had a limited control authority in the area of security services.<sup>266</sup> In 1949 was created the special Public Security Commission of Political Bureau of the Communist party (PZPR), headed by the Communist leader Bolesław Bierut.<sup>267</sup> After 1956 one of the Secretaries of the Central Committee of the Polish Communist party (PZPR) was responsible for the security organs.<sup>268</sup> The General Inspectorate of the Minister of the Internal Affairs in the Ministry of Internal Affairs was established as the minister's control apparatus.<sup>269</sup> In the SB, the Security Service's Control Branch was responsible for officer's and their families proper political, Communist views. This Branch had also to quash crimes committed by the special service's officers.<sup>270</sup>

After 1989 in independent Poland the new services (UOP) were created on the legal basis, after the parliamentary debate. But there were no formal oversight system and for example there was no parliamentary screening of the candidates for the main positions in the service. The parliamentary hearings had only "informational" character and the government was not obliged by its results.<sup>271</sup> The only advisory, (not oversight) body was the Political Advisory Committee of the Ministry of Internal Affairs (PKD). Its members were nominated by the Minister and could not be treated as the representation of the parliament. PKD had only a right to express its opinion, with no decisive or oversight authority.<sup>272</sup>

In the proposals of the complex reform of the Ministry of Internal Affairs prepared in 1992, there was a project to establish the separate oversight body within the executive power. The UOP would have been separated from the Ministry of Internal Affairs and would have been controlled by the College consisting of 7 members representing as government as president. College would have had obligation to estimate and control UOP activity, accept budget of the service and define UOP trends of activity.<sup>273</sup>

Paradoxically it was the next (third) UOP chief Jerzy Konieczny who was a main follower of the parliamentary control over his service.<sup>274</sup> But from the beginning there were controversies about the access to special services' secret information.<sup>275</sup>

---

<sup>264</sup> Government's Declaration No 140/1955.

<sup>265</sup> Ibidem.

<sup>266</sup> Law of 13.12.1957, Dziennik Ustaw 1957.

<sup>267</sup> The Secretariat's of The Central Committee of the PZPR's Resolution on the work of the security organs of 24.02.1949.

<sup>268</sup> "Generał Kiszczak mywi... op. cit.

<sup>269</sup> The Minister's of Internal Affairs Regulation No 54 z 17.03.1960, Dziennik Urzędowy MSW, no 12/60, poz.24

<sup>270</sup> "Teczki czyli widma bezpieczeństwa", Warsaw 1992, pg. 142.

<sup>271</sup> Prawo i życie, 19.05.1990

<sup>272</sup> Ibidem.

<sup>273</sup> życie Warszawy, 1?-12.07.1992.

<sup>274</sup> Gazeta Wyborcza, 25-26.07.1992.

<sup>275</sup> Polska Zbrojnia, 15.12.1992.

As in the USA, the creation of the parliamentary oversight body was fastened by the scandals. In February 1993, UOP was accused of abuses and illegal activity. The affair known as the "Instruction 0015 case" started when right politician Jarosław Kaczyński, accused UOP of promulgation of the special regulation (Instruction 0015) on the operational activity within political parties.<sup>276</sup>

This case revealed the lack of bodies able to clear up such doubts about special services' activity. At first the case was examined by the parliamentary Commission of the Internal Affairs. It appealed to UOP to annul the instruction "if the accusations were justified".<sup>277</sup> Although UOP revealed the instruction to the commission, it was not able to decide if the accusations were justified. Then Commission decided to ask The First Chairman of the Supreme Court to solve the problem.<sup>278</sup> But he refused, because of the lack of authority to solve such problems.<sup>279</sup> Then Commission asked The Constitutional Tribunal, but before its judgment, UOP annulled the instruction, because of the fact that Kaczyński had revealed this document to the public.<sup>280</sup> Then prosecutor started investigation against Kaczyński.<sup>281</sup> Besides all this case effected in the parliamentary discussion on the special services.<sup>282</sup> On 31 of March, 1993 parliamentary Commission of Internal Affairs conceded the need to create the parliamentary oversight body. The members of the commission prepared two projects. Both of them were giving the very wide authority to the projected commission.<sup>283</sup> It would have right to pronounce its opinion on candidatures for the main positions in the service, on service's budget, on its internal regulations. According to the first project UOP would not have been obliged to inform commission about its secret operations and operational files.<sup>284</sup> The commission would have consist of about 7 members of parliament, screened by the services.<sup>285</sup> This project was criticized by the right opposition, which proposed the other model of oversight commission. According to its project, commission should have been dominated by the opposition and should have got access to all secret files and investigative authority.<sup>286</sup> The Commission of Internal Affairs had decided to continue its works on the projects, but before they finished, president Wałęsa dissolved the parliament.<sup>287</sup> New election was won by the post-communists.

The new, left-dominated parliament started to continue work the project. And again scandal was a catalyst of the changes.<sup>288</sup> And again this idea was supported by the new UOP chief - colonel Gromosław Czempicki.<sup>289</sup>

The project prepared by the post-Communist Left Democratic Alliance (SLD) was supported by all parties, excluding its coalition partner PSL (Peasant Party). The Parliament started to work the project on 22 of January 1994.<sup>290</sup>

---

<sup>276</sup> Nowa Europa, 22.03.1993

<sup>277</sup> Spotkania, 18-24.03.1993

<sup>278</sup> Spotkania, 18-24.03.1993

<sup>279</sup> Sztandar Młodych, 15.03.1993

<sup>280</sup> Gazeta Wyborcza, 23.06.1993, Nowa Europa, 22.03.1993

<sup>281</sup> Życie Warszawy, 23.03.1993, Gazeta Wyborcza, 25.03.1993..

<sup>282</sup> Nowa Europa, 22.03.1993

<sup>283</sup> Rzeczpospolita, 01.04.1993

<sup>284</sup> Rzeczpospolita, 01.04.1993

<sup>285</sup> Gazeta Wyborcza, 01.04.1993,

<sup>286</sup> Rzeczpospolita, 01.04.1993, Nowa Europa, 01.04.1993,

<sup>287</sup> Rzeczpospolita, 01.04.1993,

<sup>288</sup> UOP was accused of the conducting special operation against Irish terrorists without legal basis. Gazeta Wyborcza 27.11.1993, Nowa Europa, 02.12.1993

<sup>289</sup> Sztandar Młodych, 17-19.12.1993.

<sup>290</sup> Życie Warszawy, 22.01.1994.

The project was based on one prepared by the previous parliament. Finally, on the 27 of April 1995, the Parliament passed the bill on the creation of the Commission on the Special Services .<sup>291</sup>

The commission consists of maximal 7 members, proposed by the main parties or minimum 35 deputies. The members are to be screened by the special services, before they gain access to the secret information.<sup>292</sup> The Chairman and his deputy are changing every six months. One of them must represent the parliamentary opposition.<sup>293</sup>

The members of the first commission were elected on 29 of September 1995, the first session took place on the 05 of October 1995. The commission has no decisive authority, it can only express its opinion about legality of UOP actions, its expenditures, trends of work, interim regulations. Its opinion about those cases, including candidates for the main positions, are not obligatory for the government and UOP heads.<sup>294</sup> In the new parliament, the Commission on the Special Services, consists of 5 members - three from the ruling coalition, two from the opposition.<sup>295</sup>

In Czech Republic, the parliamentary oversight committee was established in 1993, consisted of 7 members and entitled to control only civil special service - the Security Information Service (BIS).<sup>296</sup> This a rule that committee is headed by the representative of the opposition.<sup>297</sup> Although that fact, the control mechanism are criticized as ineffective, inefficient and limited. Politicians complained that the members of these committee were entitled to control only closed files (finished actions) and an end of an action was decided by the director of the controlled service. Officers were entitled to testify to a committee only in an extent defined by the director of the service.<sup>298</sup>

In Russia there is no parliamentary oversight of the special services. In February 1992 The Russian Supreme Council (parliament) made an effort to establish its total control over special services. Yeltsin refused to confirm this declaration and subdued himself all Russian services.<sup>299</sup>

Although the Federal Law "On Federal Security Services Agencies" of 17.06.1992 and law "On Investigative and Enforcement Activities in the Russian Federation" were passed by the State Duma in 1995, there is no normative basis for the public and parliamentary control over such services. At first there are some services (for example FAPSI and GUO) which activities are not regulated by any law and are conducted on the basis of unknown statutes and instructions, which is unlawful in its

---

<sup>291</sup> The Information Materials of the Commission for the Special Services.

<sup>292</sup> The Polish Parliament's Regulation, Chapter 5a.

<sup>293</sup> Ibidem..

<sup>294</sup> Parliament's Declaration's of 30.07.1997

<sup>295</sup> Information materials from the Parliamentary Commission for the Special Services.

<sup>296</sup> The Law on the Security Information Service (BIS) of 07.07.1994, paragraph 18 - 154/1994, Sb CR.

<sup>297</sup> On 24 Of July, 1998 new Czech Parliament established committee which consists of two politicians from the ruling CSSD party, two from the opposition (ODS party) and three from other parties 9KSCM, US, KDU-CSL). Czech Parliament Session of 24. 07.1998, in Czech Parliament Websites.

<sup>298</sup> Former FBIS deputy chief and present minister of the special services, Jaroslav Basta's paper on the Conference "Security Services in Civil Society", Warsaw, July 1995.

<sup>299</sup> The Supreme Council Declaration of 21.02.1992. and Russian President's Decree of 25.02.1992.) of 21.02.1922.



elf. Secondly, there is no mechanism of control if the services fulfill the existing laws or abuse them. The State Duma Security Committee have no right to obtain any classified information about services activity and its proclamations and decisions have no legal value.

The parliamentary control over the Federal Security Service according to the Article 23 of the Law on FSB is actually only of a declaratory character since it is exercised within the framework of the Russian Constitution which doesn't allow any opportunity of even discussing the candidature for the post of the FSB director. The parliamentary control is reduced to merely approving one line in the state budget without the opportunity of controlling its article-by-article observation. This only refers to the open part of the budget. The secret part of the budget isn't even subject to the internal governmental control.<sup>300</sup>

The only institution obliged and privileged to control special services is the President of the Russian Federation. In fact only he or his confidants can change the structure, interim regulations, fired the officers. He can also delegate this control authority to other institutions, for example to the Russian Security Council.<sup>301</sup>

The lack of effective parliamentary oversight resulted in such strange ideas as the conception of the international oversight and control over special services. Such control would have been pattern on the international conventions on the nuclear weapon and would helped to create the confidence between states.<sup>302</sup>

## **Chapter VI - Social and Psychological Determinants of Legal Regime, Political Oversight, and Tasks performed by Special Services.**

It is very interesting and unfortunately hard to examine how social and psychological determinants can act in the area of the security system in various countries. This is of course connected with the political and historical determinants but I will try to separate those determinants and examine their influence.

For example it is very important to examine the social perception of the security system and degree of the social acceptance for the special services' activity, especi

---

<sup>300</sup>Vladimir Oivin, "Russian legislation on secret services: possibilities of control, Glasnost Foundation, Moscow, 1995, pg 2

<sup>301</sup> Such commission within the Security Council was created in November 1998 to investigate accusations put by the Boris Berezovsky, who had accused FSB of creation of the special section in the aim to kill him. 1999.01.06, TASS, Interfax

<sup>302</sup> Idea of Viacheslav Ivanov (Molotov's grandson), member of the Organizational Committee of the Conference "KGB - yesterday, today and tomorrow", expressed on the Congress of the Russian Intelligentsia on 27-28.11.1992. "Izvestia" 12.01.1993.

ally when this activity can pose a threat to democracy and individual freedoms. The social pressure on politicians in this area can result in the effective oversight and accountability of special services. It happened in western democracies. In totalitarian states society have ignored this problem or even accepted the growing improper influence of the special services in the country. In this case terrorism, corruption, ethnic and national violence have been seen as justifications for according broad missions and intrusive powers to the special services.

It is hard to measure the degree of social acceptance for any institutions in totalitarian states. But for example the degree of the social acceptance for the security services can be measured by the number of collaborators and the in the number of people willing to work in those services. The degree of this acceptance can also be measured by the prestige of the profession of the security or intelligence service officer.

It is very important for the result of my research to examine the reasons of the social perception of the security institutions, during the process of transition of the state structure and political system. For example in post-Communist countries people can treat special services as the former Communist security service or they can change their previous opinion - but how fast it will happen?

In Poland there were made two opinion polls about social views about special services. In the first in 1996, only 10 % of researched persons declared good orientation in the UOP activity and tasks. Almost a half (47%) were poorly oriented, and 43 % did know anything about UOP. Almost a half of people, asked in this poll found UOP as an inefficient institution (52%).<sup>303</sup> UOP was seen as the institution involved in politics, acting in the interest of the government (50%) used in the political fights (69%). Only 14 % believed that UOP was apolitical, only 21% that it was acting in the interest of the society.<sup>304</sup> But about a half of respondents wanted UOP to be apolitical. Poles were also against UOP invasion into people's private life. They were against mail opening (63%), telephone and room taping (58%).<sup>305</sup>

The second opinion poll made in December 1997 showed that still only 75 % of the public heard about existing structure of the security services, but only 14% of them thought that those services act in the interest of the nation. According to the 46% of them those services act in the interest of the ruling elite, 17 % accused UOP of playing its own game. 67 % believed that UOP was used in the political fights, and only 9 % believed that it was apolitical. 40 % thought that UOP conduct its own political activity. This negative views about UOP in 1997 were shared as by the followers of the left government (65 %) as by the opponents (80 %).<sup>306</sup>

In the same year almost 72 % of Poles believed in the presence of the former Communist secret police informers among ruling elite. And again this opinion was shared as by the right oriented citizens (80 %) as by the left oriented (69 %).<sup>307</sup> The year after, in 1998, the number of persons believing in the presence of those informers among politicians have fell down to 66%.<sup>308</sup>

---

<sup>303</sup> The poll made by CBOS, 12-17.07.1996 (N=1088).

<sup>304</sup> The poll made by CBOS 12-17.07.1996 op. cit.

<sup>305</sup> Ibidem.

<sup>306</sup> the poll made by CBOS, December 1997.

<sup>307</sup> The poll made by OBOP, 7-10.12.1996, on 1056 representative Poles.

<sup>308</sup> The poll made CBOS, 11-16.12.1997 on 1066 representative Poles.

I have no similar data about Russia. I can only deduce from the polls about public trust in the government, police and Internal Ministry. In the begging of 1999, almost a half (46 %) of Russians were unsatisfied with work of the Internal Ministry and police (militia).<sup>309</sup> Militia was among the most mistrusted institutions - 55 %.<sup>310</sup>

This opposite - society versus ruling elite - is significant for the totalitarian or the post-totalitarian society. But also in democracy special services are suspected of permanent effort to destroy democratic freedoms. For example the National Security Act significant prohibition on the CIA's having any "police, subpoena, law-enforcement powers, or internal security functions" reflected the congressional and public desire to ensure that they were not creating a U.S. "Gestapo" and to preserve the FBI's primacy in domestic matters. It is important remark, because the FBI is acting as a law-enforcement federal agency in the Department of Justice, without clandestine atmosphere typical for the special services.<sup>311</sup> By analogy, the Intelligence Identities Protection Act of 1982 raised controversy about its possible use for the suppression of the civil rights and freedom of speech.<sup>312</sup>

According to Lustgarten and Leigh, years of exclusion special services questions from the public discussion, results in an almost complete lack of awareness among the general citizenry that there are issues to be discussed.<sup>313</sup> In the USA until the 1970s the Members of both Houses preferred to stay as far as possible from the national security matters, leaving them to the small group of senior Members.<sup>314</sup> By analogy in the 1990s in Poland there were no volunteers for the new parliamentary oversight commission in work. Deputies were afraid of being pressed or even blackmailed by the special services.<sup>315</sup>

In post totalitarian states, just because of the past it is a shame to collaborate with secret services, because most of citizens treat them like a former political police. Sometimes because of this heritage, post-totalitarian societies are more conscious of the problem of oversight of the special services. In Germany the creation of the BfV (The Federal Office for the Protection of the Constitution) resulted from the historical experience of the Weimar Republic, which democratic system was misused by radical Communist and Nazi groups and eventually overthrown. The great emphasis on parliamentary control results from the experience of the Third Reich and the role of its special services (Gestapo).<sup>316</sup>

The same factors play a great role in post-Communist countries. In Poland the historical experience of the latest past results in the limitation of the special services authority in the area of politics. The former opposition treats every kind of security service as the totalitarian institution.<sup>317</sup> Besides all former anti-Communist and later chiefs of UOP have presented disinclination to special services. They have treated

---

<sup>309</sup> The pool made by RASE, 22.01.-08.02.1999, Interfax.

<sup>310</sup> Poll made by FOM, 13-14.02.1999,

<sup>311</sup> "Evolution of the US Intelligence Community", op. cit., s.7.

<sup>312</sup> Thomas I. Emerson, "National Security and Civil Liberties", 1984, s.11.

<sup>313</sup> Lustgarten i Leigh, op.cit., s.496.

<sup>314</sup> "Legislative Oversight of Intelligence Activities. The U.S. Experience». op., cit, pg. 3.

<sup>315</sup> Gazeta Wyborcza, 22-23.01.1994

<sup>316</sup> Harald Nielsen, "The German Analysis and Assessment System", in: "Intelligence Analysis and Assessment", op. cit., pg. 55-56.

<sup>317</sup> Magazyn 997, 21.02.1993.

such work as something shameful. That is why they have been very afraid of volunteers coming to the new services.<sup>318</sup>

The biggest scandal in the area of the special services in Poland known as the *Olin affair*, is an interesting example of the lasting prejudices and stereotypes of different social groups. Case began when, after the presidential elections won by the post-Communist Aleksander Kwańniewski, the prime minister (from the post-Communist party) was accused by the special services of being a Soviet and Russian spy. The interpretation of this case was complicated by the former Communist spies' and officers' involvement in this operation and their former links with the Soviet services. They had been rewarded by the defeated president Lech Waiksa with the general's ranks and fired by the next president few months later.

For the leftists "the Olin case" was a plot prepared by the former SB officers to save Waiksa's presidency, for the rightists was obvious that a former Communist politician did have to be a Soviet and Russian spy. For some opponents of the president Waiksa, those accusations against Oleksy were weakened by the fact that they were formulated by the former Communist intelligence servicemen.<sup>319</sup>

The only exemption is Russia, where nostalgia for the KGB still exists, especially among communists and nationalists.<sup>320</sup> The Parliament's Declaration of 04.12.1998 on reconstruction of the monument of the first CheKa chief Felix Dzieriycki can be treated as a symbol of these feelings. According to deputies Dzieriycki is a symbol of fight with criminals and in the time of the growing criminality such symbol is needed. Dzieriycki's monument should be a "moral support for the organs of public order".<sup>321</sup>

---

<sup>318</sup> Prawo i życie, 19.05.1990.

<sup>319</sup> Polityka, No, 05.06.1999.

<sup>320</sup> 1997.12.19, TV RTR, TV ORT, TASS

<sup>321</sup> TV RTR, TV ORT, TASS, Interfax, PAP, 04-06.12.1998.

## Chapter VII - Conclusions.

The clear definition of the national security is a crucial issue for the estimation of the legality of the special services activity. As better it is defined as less arbitrariness and abuses occur. In democratic countries (also in the East Europe) the national security concept is defined or is being defined more and more precisely with respect to the human and civil rights and freedoms.

It is also no doubt that the shape of special services' system in every country is a result of political conditions and legal regime. In democratic countries modern special services developed from the police, military and diplomatic services created by citizens for protection of the common interests as well from domestic as foreign aggression.

In the democratic state special services are a part of the democratic, constitutional order, and are not bound by the laws. They are accountable for their actions. Sometimes accountability is provided in secret, but that is nonetheless a form of accountability. Relations between citizens and the democratic state are based on a simple model. The purpose of the state is to protect the rights of the citizens. Special services - as other institutions - are hired by the citizens, so they should observe the principle that the citizens' rights are superior to the rights of the state. There is a clear legal framework in the area of special services. Their access to the private sphere of citizens life is limited by law and the citizens have many rights in the situation of collision between them and special service.

In the democratic state the activities and functions of security services can not extend beyond those which necessary for protecting the democratic and constitutional order. No security service can arbitrarily threaten citizens' rights and freedoms; if it does, it threatens the constitutional order instead of protecting it. The democratic oversight over the special services is made in three ways: intergovernmental oversight, parliament oversight and public oversight.

The special services in democratic state are under the public, informal oversight. The first part of this oversight is guaranteed by the freedom of information. In U.S. The Freedom of Information Act gives a right for every citizen to ask for informatio

n about the activity of government institutions including intelligence and security agencies.

In totalitarian states there is no clear definition of the national security. Those matters are mistaken with the security of the ruling elite or ideal state as the organization superior for the nation. In totalitarian state the right of the state is superior to the rights of the citizens and the security services are a part of this system.

Because of fact that, as I have mentioned above, the shape of organization of intelligence community depends on the administrative system in the country, the centralizing totalitarian system is reflected in the same kind of structure of the security services. In totalitarian states special services developed from the various kinds of police forces, especially secret political police. Even civilian or military foreign intelligence services are a part of the political police. They used to fight domestic dissidents and emigrants and are involved in political struggles inside the country. They collect information about individuals for the purpose of influencing the political life of the country.

There is no clear organizational structure and division of tasks. Every kind of special services activity is aimed at the protection of the ruling elite. That's why, even formally divided national security structure is in fact centralized and controlled by the same only factor - the ruling elite. We can even say that the legalization of the special services activity is strongly connected with the process of democratization of the authoritarian or totalitarian state. Every kind of the activity of special services is secret and prohibiting by law.

Of course the oppressive nature of the authoritarian or totalitarian state exclude any public discussion or invasion in the security or intelligence matters. If even there is a parliament it has no right to oversight and control the services. Also budget expenditures on the special services are hidden in the different part of the budget.

Although the new democracies in the Eastern Europe try to build the effective and modern states, special services through the region still pose a possible threat to the success of this process. While there are differences in authority and accountability, in no country has an adequate system of oversight and control been established. Of course the fact that those services operate in secret, makes effective accountability objectively difficult. But in post-Communist countries this factor is enhanced by the heritage of the former system. The services unique access to information is an objective fact in every countries but in post-Communist states it is enhanced by the problem of the former Communist police's former secret agents within the ruling elite. The limitation of this knowledge only to the new special services and former Communist officers enhances their ability to exercise improper influence on government and politicians.

It is obvious that the most radical changes took place in the countries which crossed out the Communist past.

In Central and Eastern Europe, Poland was the first country in the Communist system where this regime collapsed. But it was not a result of the revolution but of the negotiations between the communists and the opposition. As a consequence new democratic institutions were built in co-operation with the communists. Former dissidents who had had troubles with the security service came rapidly to the parliament.

ent to draft the new law for the new Polish security service. They were not prepared to do it and that's why the new service and new law has been not ideal. The new service, called The State Protection Office, replaced the old Security Service. But the new service not only employed people mainly from the old Communist service, but it also duplicated the old structure. The State Protection Office has been responsible for the foreign intelligence, counterintelligence, investigation procedures and the analysis and research. At the beginning, there was no parliamentary oversight, only consultative committee was created. The process of the staff replacement was stopped in 1993, when post-Communist party won the elections. At the same time parliament created the oversight commission with the opposition's participation. After the last elections and because of NATO requirements new government has began the reforms in the existing service.

Although the Czech Republic liquidated former Communist special service and the new services are subject to parliamentary control, scandals have regularly occurred.

The Russian special services are the continuations of the KGB's heritage. In the end of 1991, the KGB wasn't destroyed but only divided into separate services. And since this time there have been attempts to reunite them in the one structure. The parliamentary oversight exists only in theory, because the security services are dominated by the president Yeltsin. The definition of the security services role is very broad but even those norm are not followed. The services are also involved in economy and foreign policy: The Government, the Presidential Administration and the Foreign Ministry are dominated by the former KGB intelligence officers, the arm trade is an area of struggle between the military and civilian intelligence services. Former (or present) intelligence officers are employed by the private business.

As we see, the main factor decisive for the continuation or negation of the former Communist special structures, is the political mentality. New elite could adopt methods and tasks of the political activity of the former oppressive state, even if publicly refused to condemn it. But it also could refuse to prolong this practice and decide to change everything - the legal framework and practice. Continuation means the situation when the state successor of the authoritarian or totalitarian state (no matter if it is a democratic or totalitarian state) continues or even strengthens the main factors in the interesting area. The continuation could be total at formal and practical level (personal, organizational and even legal) or partial at practice level (tasks and methods).

This is easy to understand, that organizing their own services, with the agreement to continuing or even strengthening the tasks and methods of work of the former structures, the new elite has to take example from the former regulations and use former spy networks.

The transformation of the former Communist state structures of repression into new special services, that observe the law and respect human rights is a complex and rather long process. The presence within the new special services of a significant number of staff and even all units adopted from the former structures of repression, should be seen as the important factor of this process.

The noninvolvement of the special services in politics is a measure of democracy. But it does not mean that democratic state should resist defenseless against extre

mist groups. Special services should contribute to the protection of fundamental human rights. However, its activities and functions cannot extend beyond those that are necessary for protecting the democratic, constitutional order and basic freedoms.

In spite of the visible progress, there has been a permanent tension between the intelligence and security community and the citizens (parliament, government, public) in the subject of revelation of the secret matters.

The main problem is to find ways to exercise control that will not inhibit the legitimate operations of the special services, control strong but not excessive, control that prevent the degeneration of the services but don't destroy them. The security services must be a part of the democratic, constitutional order and its creation or transition is strongly connected with the all process of the building of the democratic state.

10.06.1999

ANTONI PODOLSKI