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State Security and Individual Security as Exemplified by the Recruitment of Secret Collaborators by the Polish Intelligence Service

Abstract: The material scope of the research problem presented in the text encompasses the issues concerned with the possibilities for and limitations of recruiting secret collaborators by the Polish civilian intelligence service. The analysis of the problematics of secret collaboration focuses mainly on institutional and legal aspects, which can be seen in its inclusion in the systemic legal perspective, encompassing such dimensions as administrative and legal, criminal and legal, civil and legal, and ethical one. Next to the normative aspects, the text addresses sociological and psychological aspects of recruiting secret collaborators by special services, thereby depicting the main recruitment methods. The methodology adopted is chiefly based on the institutional and legal approach, in which use is made of, *inter alia*, textual, functional and systemic interpretations. The problem of possible abuse concerned with the recruitment of secret collaborators by special services is illustrated with an abstract case study and a relevant legal interpretation. Besides, to extend the analysis of psychological and sociological aspects of recruiting secret collaborators, the study uses limited open interviews with former officers of the civilian special services operating in Poland before 1990.

Keywords: *state security, special services, intelligence, counter-intelligence, secret collaboration, recruitment of agents*

Introduction

The material scope of the research problem addressed in the text concerns the possibilities of and limitations on recruiting secret collaborators by the Polish civilian intelligence service, i.e., the Internal Security Agency (abbreviated as ABW) and the Foreign Intelligence Agency

(abbreviated as AW)¹. The issues concerned with recruiting secret collaborators as a result of operational and investigative activities are approached in the context of state security and individual security. The analysis of secret collaboration focuses mainly on institutional and legal aspects, which come to be expressed in the presentation of its administrative and legal framework. Besides, the administrative and legal framework is penal and legal consequences of possible abuse by intelligence officers, which may occur during and in connection with the recruitment and supervision of a secret collaborator. The issue of possible abuse is illustrated with a case study and a relevant legal interpretation. Moreover, the text includes a synthetic characterisation of sociological and psychological aspects of secret collaboration with intelligence services to introduce an extra-legal context.

Special powers granted to various state institutions with a view to effective carrying out the tasks begs the question about the limits on these powers and their potential abuse. There is no doubt that security, an unquestionable good, determines the rationale behind the operation of a political community and is constitutionally grounded. That is why Art. 5 of the Constitution of the Republic of Poland indicates that the state is obliged to ensure the security of its citizens (Constitution of the Republic of Poland, Journal of Laws 1997, no. 78, item 483, as amended). However, it is noteworthy that security is not the only legal interest, nor is it positioned above or below other interests or values in the Constitution of the Republic of Poland. Hence, the content of Art. 31(3) of the RP Constitution provides that limitations upon the exercise of constitutional freedoms and rights by individuals may be imposed only by statute and only when necessary in a democratic state, *inter alia*, for the protection of its security (Garlicki, 2020, pp. 121–136; Górecki, 2020, pp. 87–119; Izdebski, 2021, pp. 221–270). The proportionality in the interference in the individual's rights and freedoms, i.e., his or her security, is subject to constitutional review. However, this review can be evaded by special powers vested in special services, especially with regard to operational and investigative actions.

The main purpose of the text is to perform an institutional and legal analysis of the activity of the Polish intelligence services consisting in the recruitment of secret collaborators, taking into account a practical case study, as well as an assessment of the legal provisions in force with regard to a potential violation of specific legal interests. In order to elaborate the material scope of the analysis, the following research questions are presented in the text: (1) What are the main methods for recruiting secret collaborators by intelligence services?, (2) What limitations on recruitment of secret collaborators by the civilian intelligence services in Poland can be indicated?, (3) What potential threats related to the abuse of powers by the civilian intelligence services in Poland with regard to recruitment of secret collaborators can be indicated?

¹ Act of 24 May 2002 on the *Internal Security Agency and the Foreign Intelligence Agency* (Journal of Laws 2002, no. 74, item 676, as amended) [Abbreviated as Act on ABW and AW].

The presented analysis is chiefly an overview performed considering an institutional and legal approach. The presentation of the problem and the dogmatic debate on the issues concerning recruiting secret collaborators by the intelligence services in Poland has been supplemented with the author's own opinions and conclusions. Besides, textual, functional and systematic interpretations of the legislation are employed to analyse the legal aspects of recruiting secret collaborators. The textual interpretation is based on a strict interpretation of the legislation and a broader interpretation, including the author's presuppositions. The functional interpretation focuses on the function of selected legal solutions so that the presented legal regulations include the purpose and sense intended by the legislator. Regarding the systemic interpretation, the issues concerned with recruiting secret collaborators are approached comprehensively while considering codified and non-codified criminal-law provisions, civil law provisions, and professional ethics. In addition, for a better understanding of the sense of legal regulations in force and their practical application, the text uses an abstract case study with no factual equivalent, constituting a thought experiment.

It is also worth indicating that with regard to the synthetic analysis of the motivation to engage in secret collaboration, the text makes use of the conclusions following from open interviews conducted with eight former employees of the Polish civilian special services in operation before 1990 (employees of the 3rd department of the Security Service). The interviews were conducted in 2015–2017 in connection with broader research into the perception of threats to state security by the state organs before 1990. The questions addressed to special services employees were concerned with the perception of threats to internal and external security with regard to offences against the state. In the open interview, the questions concerned methods for working with secret collaborators, *inter alia*: (1) Which methods of recruitment do you consider most commonly employed in the activities undertaken by the civilian special services in 1980–1990, (2) Which motivations for collaboration do you consider most common in individuals recruited by the civilian special services?, (3) Which traits of the person recruited by the civilian special services were deemed desirable? The respondents' answers served to synthesise the main motivational factors in collaborating with the special services and the recruitment methods applied by the services. The results of the interviews were verified against the literature written in connection with the research activity of the Institute of National Remembrance undertaken in the field of secret collaboration with special services in Poland before 1990, and the reference materials obtained during an earlier library holdings survey at the Institute of National Remembrance (Musiał, 2012; 2013; 2015a; 2015b).

1. The Sociological and Psychological Aspects of the Recruitment of Secret Collaborators

While analysing the sociological and psychological aspects of recruiting collaborators by special services, it is worth delving into the literature and studies of the motivations of those who commit espionage offences or collaborate with foreign intelligence in general. The motives behind collaboration in both cases may be identical, even though they are connected with different surrounding circumstances in which collaboration is taken up. Analysing motivational reasons for choosing to collaborate can, in reverse, identify special methods employed by special services in recruiting secret collaborators.

Sun Tzu (Sun Wu) enumerates different types of spies in *The Art of War*, written in the 4th century BC. By listing various categories of spies, the author *de facto* presents various kinds of motivation for collaboration, specifying the manners in which they are recruited. As indicated by Sun Tzu, the motivations for collaboration are identical to those present in contemporary science and popular science literature. The main ones include corruption (financial motivation), a sense of injustice and harm (personal motivation), and duplicity and greed (personality-based motivation) (Sun Tzu & Sun Pin, 2005, pp. 134–137). Touhy (1923, pp. 11–12) made an interesting observation about his intelligence job. He wrote that his work was not that clandestine after all because people would come forward of their own accord, offering information or documentation most frequently in exchange for money, which he, in turn, paid them, but having first verified the value of the documents provided.

In his analyses, Wilder (2017, pp. 19–36) emphasises the psychological traits of the people engaging in collaboration with intelligence. These traits include (1) dysfunctional personality, (2) critical situations in life, and (3) susceptibility arising from the circumstances. According to the author, intelligence service collaborators often have pathological personality traits, which include: (1) inclination to seek exciting experiences, (2) narcissistic personality disorder (e.g., a sense of entitlement, a belief they are special), and (3) tendency to dominate and control.

Białowąs has authored interesting research concerned with motivational reasons for actuating collaborators of foreign intelligence services. The author identified such motivations as the willingness to make some material gains (the need to turn a quick and easy profit), the need to take up residence in the country for which the perpetrator has spied, the need to realise some political ideas (political expression), the need for prominence, the need for high excitement and affiliation. The results of the research conducted by Białowąs in a group of persons convicted of working for a foreign intelligence service show that their main motivation was material gain – almost half of the respondents. The second largest section was made up of those who, through espionage, wanted to improve their

life comfort. However, this reason has its specific context resulting from the socio-political conditions prevalent in Poland at that time. Only 10% of the respondents spoke about the need for political expression, which shows that political or ideological reason plays a lesser role than economic reason. Still, in other Polish research, this reason played a bigger role because it accounted for even 25% of the respondents. Despite Wilder's findings, in Białowas' research, the psychological reasons, e.g., the need for prominence, had a smaller share with almost 6% of the respondents (Białowas, 1980, pp. 115–154; Hoc, 1985, pp. 315–320). There is no denying that in recruiting secret collaborators from among the Polish citizens, the Polish special services typically emphasise psychological and ideological susceptibility; the recruiters stress the exceptionality of the person recruited, appealing to the person's need to provide help or to feel generally needed.

The presented juxtaposition of the main motivational factors in choosing to collaborate with the special services is worth comparing with the motivations indicated by the officers. Due to the limited possibilities of researching the recruitment of secret collaborators (or, more broadly, secret personal sources of information) by active officers of the contemporary special services, limited interviews were conducted with respondents whom the Security Service employed before 1990. The analysis of their responses shows that the most frequent motivational factor in taking up collaboration by personal sources of information was not coercion used by the officers (although it was used, e.g., blackmail), but the material factor, i.e., money handed over in exchange for collaboration. Another crucial factor was the willingness to take revenge on the milieu to which the personal information source was related. By generalising the practice of recruiting secret collaborators at District Offices of Internal Affairs² by the Security Service, one can point to the following methods of recruitment: (1) voluntary collaboration for financial (material gain) or aspirational reasons (a guarantee of professional promotion), (2) fear of embarrassment about the disclosure of crimes committed in the place of abode or workplace, (3) official contact with the Security Service officers in the form of operational contact (e.g., contact with the management staff of state companies and institutions, which in certain situations was obligatory), (4) foreign trips (passports were issued by the District Offices of Internal Affairs).

The officers of the civilian special services operating until 1990 were obliged to recruit personal sources of information in line with the threats in connection with the investigation of facilities (e.g., universities, companies) and environments (e.g., academics, company employees). Hence the double nature of collected information, i.e., information concerning (1) the material issues related to the function of the facility under analysis and information concerning (2) knowledge of individuals employed at specific facilities. In the latter case, the individuals' knowledge was concerned with potential threats (e.g., irregularities, offences) and their personal life, including the so-called "sensitive information".

² District Offices of Internal Affairs – local units of the Ministry of Internal Affairs, in operation in Poland in 1983–1990.

A crucial element of the cooperation with an operational contact was the willingness to associate him or her with the supervising Security Service officer. The relationship was chiefly based on the need to exchange or share information that the operational contact possessed. If the cooperation was effective and valuable information was provided, the individual was deemed fit to become a candidate for a secret collaborator. A longer vetting of a candidate for a secret collaborator affected the quality of the obtained information, which could then be utilised procedurally. However, a shorter route was usually taken, i.e., an individual was qualified as a candidate for a secret collaborator, “processed” for 1–2 months, and then recruited as a secret collaborator. This method was most commonly employed in most activities undertaken by the Security Service with regard to the accomplishment of tasks, operational issue files and operational investigations in the 1980s, particularly in a case where a person under investigation signed the obligation to collaborate without reservation.

2. Legal Limitations in Recruitment of Secret Collaborators

The act regulating the operation of the Polish counter-intelligence and civilian counter-intelligence provides the power to foster a special kind of relationship based on cooperation with individuals who are not service officers. At the same time, the act introduces special limitations on the possibility of collaborating with individuals holding certain positions or performing certain functions. In this category the act includes: (1) members of parliament and senators, (2) individuals holding managerial positions in state entities, indicated in the act on remuneration for such individuals³, (3) general directors at ministries, central or provincial offices, (4) judges, assessors, prosecutors, barristers and solicitors⁴, (5) members of public TV and radio supervisory boards, public TV and radio channel board members and directors, and directors of the local TV and radio branches, (6) director general, office directors and regional branch managers at the Polish Press Agency, (7) broadcasters within the meaning of the Broadcasting Act⁵, (8) editors-in-chief, journalists or individuals con-

³ Act of 31 July 1981 *on remuneration for persons holding managerial positions in state institutions* (Journal of Laws 2020, item 1637, and Journal of Laws 2021, item 1834).

⁴ In the original version of the act the list did not include solicitors and assessors. In this respect, the amendment were made under: Act of 10 July 2015 *on the amendment of Act – Law on the Organisational Structure of Common Courts, and other acts* (Art. 15, Journal of Laws 2015, item 1224), Act of 27 September 2013 *on the amendment of Act – Code of Criminal Procedure, and other acts* (Art. 19, Journal of Laws 2013, item 1247). Not including solicitors in the prohibition list for a long time due to the fact that they are reckoned among professions of public trust seems an unclear solution by the legislator; one that does not support transparency in a democratic state ruled by law.

⁵ Act of 29 December 1992 *on TV and radio broadcasting* (Journal of Laws 1993, no. 7, item 34, as amended; Journal of Laws 2020, item 805, and Journal of Laws 2021, item 1676).

ducting publishing activity, specified in the act – press law⁶, (9) university presidents⁷, and members of the General Council of Science and Higher Education, the Polish Accreditation Committee and the Council of Scientific Excellence (see Art. 37(1), Journal of Laws 2002, no. 74, item 676, as amended; Opaliński et al., 2017, pp. 172–174).

The legislator provides for exceptions to the rule limiting using secret collaborators. In Art. 37(2) of the Act on ABW and AW, it was indicated that in order to accomplish tasks, the heads of the Internal Security Agency and Foreign Intelligence Agency are allowed to permit secret collaboration with individuals who are broadcasters, editors-in-chief, journalists or persons conducting publishing activity (see Art. 37(2), Journal of Laws 2002, no. 74, item 676, as amended).

Besides, the legislator criminalises the special form of offences against information protection, which was dedicated to counter-intelligence and civilian intelligence officers, but that was done under the ABW and AW Act and not under the *Criminal Code*. While the *Criminal Code* criminalises divulging or using confidential information (bound by such clauses as top secret, secret, classified and confidential) in breach of the statutory provisions and service-related confidential information in breach of the statutory provisions or accepted obligations, the Act on ABW and AW criminalises a special kind of use of information obtained by counter-intelligence and civilian intelligence officers. Art. 153b of Act on ABW and AW criminalises the use, in breach of the act, information obtained during or in connection with the performance of official duties to exert influence on: (1) the activity of public authorities, (2) entrepreneurs or broadcasters⁸, (3) editors-in-chief, journalists or persons conducting publishing activity⁹.

Under Art. 153b of the Act on ABW and AW, the expression ‘in breach of the statutory provisions’, as opposed to the indicia specified in Art. 265 of the *Criminal Code* (“disclosure

⁶ Act of 26 January 1984 – *The Press Law* (Journal of Laws 1984, no. 5, item 24, as amended; Journal of Laws 2018, item 1914).

⁷ Interestingly, the prohibition of secret collaboration with vice-presidents and heads of basic organizational units in public and private universities was removed from the act. This change was made in 2018, under Act of 3 July 2018 *Regulations introducing the Act – Law on higher education and science* (see Art. 69, Journal of Laws 2018, item 1669). It is clearly visible that the change was made under the pretext of aligning the institutional changes owing to the higher education reform and the establishment of, *inter alia*, the Council of Scientific Excellence. Removing so many entities paved the way for operational work with individuals holding managerial positions at universities on a bigger scale than before. This should be seen as a negative thing, because the special services were thus granted extensive powers of interference in autonomous relations at universities.

⁸ Entrepreneurs or broadcasters specified in Act of 29 December 1992 *on TV and radio broadcasting* (Journal of Laws 1993, no. 7, item 34, as amended; Journal of Laws 2020, item 805, and Journal of Laws 2021, item 1676).

⁹ Editors-in-chief, journalists or persons conducting publishing activity specified in Act of 26 January 1984 – *The Press Law* (Journal of Laws 1984, no. 5, item 24, as amended; Journal of Laws 2018, item 1914).

of a state secret”), by analogy with Art. 266 of the *Criminal Code* (“disclosure of confidential information”) does not only mean information protected under the *Act on the protection of classified information*, which would otherwise often be the case but all those infringements related to the obligations resulting from the performance of official duties (Giezek, 2021, pp. 1145–1155). Interestingly, compared with Art. 266, in Art. 153b, the legislator does not use the expression “with regard to the performance of official actions”¹⁰ but, as indicated, “with regard to the performance of official duties”. However, in both cases, it is not about information obtained by the officer privately or while performing a specific action, but not in connection with it. Thus, this can be any information obtained regarding the performance of a function, particularly the conducted investigation, operational and investigative activities, or analytical activities (Grześkowiak & Wiak, 2019, pp. 1320–1322).

Another crucial indicium consists in exerting influence on the entities specified in the provision. It is also relevant to the criminological characterisation of the activities undertaken by the special services officers. The indicium of exerting influence is indicated in the *Criminal Code*, Art. 128(3) (exerting influence on official activities of a constitutional authority), Art. 224(1) (exerting influence on official activities of government authority, another public authority or local government), Art. 230a(1) (exerting influence on a decision, on acting or failing to act by a person performing a public function in connection with this function), Art. 232 (1)(2) (influencing the official functions of a court), Art. 245 (influencing a witness, an expert, a translator, the accuser or the accused), Art. 250 (exerting influence on the course of voting) (Journal of Laws 1997, no. 88, item 553, as amended). It can generally be accepted that exerting influence is about affecting, or more narrowly and negatively – coercing a person into taking or abandoning action or steering it in a specific direction; disturbing actions is also a form of influencing them (Romańczuk-Grącka, 2020, pp. 359–370). As regards Art. 153b of the Act on ABW and AW, exerting influence takes place through information obtained during or in connection with the performance of official duties by the officers of the counter-intelligence and intelligence. With regard to journalists, exerting influence may take the form of impelling someone to take up or abandon the preparation of some press material, or to include specific content in it, or of just hindering its writing. In a broader context, this will take the form of using a journalist as a “mouthpiece” (an agent of influence) for information produced by representatives of the special services for the purposes of relevance for the intelligence itself, as well as in the interest of individual officers of these services.

Next to the relationship aimed at exerting influence, the legislator criminalises, in Art. 153d of the Act on ABW and AW, the very secret collaboration with a broadcaster, an editor-

¹⁰ These indicia are part of the structure of the aggravated offence type, which criminalizes disclosure by a public official to an unauthorised person of secret information bound by the “classified” or “confidential” clause, or information obtained in connection with the performance of official actions, and the disclosure of which may endanger a legally protected interest (Art. 266(2) of the *Criminal Code*).

in-chief, a journalist, or a person conducting publishing activity. Thus, the legislator secures the prohibition of secret collaboration with particular entities without proper permission (Opaliński et al., 2017, p. 387). Therefore, it is assumed that the criminalisation of secret collaboration with particular entities concerns a situation where no proper consent has been granted, even by exception. In a situation like this, two regimes of secret collaboration are noteworthy; the formal one, which results from the special services' internal procedures for registering specific individuals as secret collaborators; the informal one, which results from actual work with particular entities irrespective of the official legitimisation through internal procedures. Special services may establish various relationships that are not formalised with the status of a secret collaborator, which is another interesting issue. Under the provisions in question, such a situation is legally irrelevant to all other entities not listed in Art. 37 of the Act on ABW and AW, but it becomes relevant if the entities concerned are included in the catalogue. However, not all entities with which the special services remain in contact are registered as secret collaborators, which may open the floodgates to abuse.

It is worthwhile considering the relation between Art. 153b and Art. 153d of the Act on ABW and AW in a situation where with his or her actions, the perpetrator infringes many criminal-law provisions, thereby fulfilling the criteria for many types of prohibited acts. An officer of the special services may engage in secret collaboration without proper permission, e.g., with a journalist while influencing him or her in a way that fulfils the criteria specified in Art. 153b. It seems that under such circumstances, a proper solution is to recognise that the proper classification is a cumulative concurrence of provisions.

3. Characterisation of the Recruitment of Secret Collaborators as Exemplified by an Abstract Case Study

3.1. General Assumptions Underlying the Case Study

In order to perform an in-depth analysis, use is made of an abstract case study with no factual equivalent. Therefore, the case study is a thought experiment aimed at presenting selected problems concerned with the possible abuse of powers by intelligence officers in connection with establishing contact with secret collaborators. In the following section of the text, the presented case will be subjected to legal and criminal analysis under the Act on the *Internal Security Agency, the Foreign Intelligence Agency*, and the Act – *Criminal Code*. The content of the case under analysis is as follows:

Dr Anna Karga, a university lecturer, turns to one of her acquaintances, Dr Eryk Cziga, who is also a university academic, asking if they could meet to discuss a job offer. During the meeting Anna Karga makes a vague reference to some unspecified collaboration with the Polish civilian counter-intelligence. Her acquaintances are to brief him on the details during the next meeting. In the meantime, Eryk Cziga is asked by Anna Karga to

e-mail his CV with particular emphasis on analytical competence, linguistic skills and education, should they be above average. Indeed, Anna Karga's acquaintances contact Eryk Cziga after five months. For a venue they choose outdoor space in a restaurant beer garden. There, Eryk Cziga is greeted by two men. Before they begin the meeting, they discreetly flash their ID cards proving that they in fact represent the Polish civilian counter-intelligence, and more specifically the department of strategic threats at the Internal Security Agency. The longest part of the talk concerns general issues concerned with threats to the state, particularly in the context of espionage threats and problems associated with energy security. Following this part, the officers ask whether Eryk Cziga would like to help the counter-intelligence build some leverage by running his own website, a blog, and posting comments via Twitter. The leverage would consist in commenting and posting texts on subjects of interest to the special services, but with special emphasis on the issues concerned with energy security, and critical comments regarding the energy policy pursued by the European Union and the Federal Republic of Germany. Eryk Cziga makes neither a negative, nor a positive response, thinking that it is merely a game played by the special services, and leading up to something more interesting. Still, all agree that in order to finalise the technical issues, they should arrange to meet again and have the matter cut-and-dried.

Two months later they phone Eryk Cziga, who says that the proposal is somewhat strange, and might serve some other purpose than the ones outlined by the officers, adding that given the hardly transparent conditions of the collaboration he can't but decline, and he can only offer his analytical services under an employment contract with the Polish counter-intelligence. The officers reply that that is out of the question, and that there is no point in continuing the communication. Three months pass by, Eryk Cziga forgets about the whole matter, but he learns that his acquaintance, Anna Karga, keeps discrediting him before their common acquaintances, saying that he is addicted to all kinds of drugs.

The presented story, which concerns various acts performed by the intelligence officers while recruiting a secret collaborator, is elaborate. Particular individuals' behaviour might be related to the fulfilment of various criteria for all manner of offence types or be legally relevant in other fields of law besides criminal law. As a result, the individual cases here require establishing the actual states, legal problems, legal grounds, legal interpretation, and, eventually, legal classification (association of the facts with legal norms).

3.2. Legal Assessment of the Individual Characters' Acts in the Case Study

The case study under consideration presents the behaviour of the following individuals: (1) Eryk Cziga, (2) Anna Karga, and (2) two officers passing themselves off as employees of the Polish civilian counter-intelligence. The first thing to do is to perform an analysis in

the light of the regulations concerned with the recruitment of secret collaborators by the Polish services, i.e., in the light of the Act on the *Internal Security Agency and the Foreign Intelligence Agency*, then in the light of the criminal law in order to establish legally relevant behaviour on the part of the individuals featuring in the story presented.

The analysis should begin with the behaviour of the officers passing themselves off as employees of the Polish counter-intelligence service. As indicated in the normative analysis, the intelligence services are entitled to recruit secret collaborators to carry out their tasks. The legal act does not prohibit service officers from recruiting academics as collaborators unless they are university presidents or members of the General Council of Science and Higher Education, the Polish Accreditation Committee, or the Council of Scientific Excellence. Eryk Cziga is not a member of any of these organisations, but it is noteworthy that the officers want to recruit him so that he can productively use the new media (his own website, a blog, and a social media account on Twitter). A question arises whether the officers are omitting the prohibition specified in Art. 37, section 1, item 8 of the Act on the Internal Security Agency and the Foreign Intelligence Service, which prohibits the recruitment of journalists.

It is worth pointing to an interesting legal problem concerned with Eryk Cziga's situation where by accomplishing tasks assigned by the officers, he matches the characteristics of a journalist specified in the *Press Law Act* and the jurisprudential doctrine. Following the press law, it is worth quoting the definition of a journalist, i.e., a person engaged in editing, creating or preparing press material, remaining in an employment relationship with an editorial board, or conducting such activity on behalf and under the authority of the editorial board. The press material mentioned in the definition means any information, opinion, documentary or other text or image published or submitted for publication, irrespective of the mass media, the kind, form, purpose or authorship. The press is understood to encompass periodical publications which do not constitute a self-contained, homogeneous whole and which appear at least once a year, with a permanent title or name, a current number and date, and particularly: dailies and periodicals, agency bulletin services, regular teletext messages, bulletins, radio and TV programmes as well as newsreels; the press also includes all existing and emerging, as a result of technological advancement, means of mass communication, including broadcasting stations as well as company and factory radio and telecommunication broadcasting systems, disseminating periodical publications using print, video, audio, and other dissemination methods; the term 'press' also embraces teams of people and individuals who pursue journalism (see Art. 7, section 2(1)(4)(5), *Journal of Laws 1984*, no. 5, item 24, as amended; Sobczak, 2008, pp. 312–347).

In the case study in question, the officers want the academic to become a blogger so that he can affect the public sphere with a thematically-oriented narrative. Undoubtedly, in the broad context of mass communication, a blogger can, in many cases, be equated with a journalist, while blogging itself might be described as Internet journalism despite frequently disparate communication strategies (Stasiuk-Krajewska, 2017, pp. 103–116). However, the question is whether a blogger can be recognised as a journalist under the *Press*

Law Act, which might have profound implications for the case study under consideration (Wilińska & Zelek, 2010, pp. 25–27; Goniak, 2020, pp. 45–59). The sceptical position on this is that a blog is not an instance of the press (therefore, a blogger is not a journalist) because it: (1) is characterised by homogeneous content, (2) does not meet the condition of proper periodicalness (i.e., does not have a permanent name, sequential numbering or publications at specific intervals). It seems that *a priori* ascribing homogeneity to a blog is not much of a refined argumentation because what difference is there between an economic blog addressing various issues concerned with economic processes and dailies and periodicals that do the same? It may be assumed that the difference will only lie in material creation and transmission technical aspects. The same applies to the *a priori* presupposition whereby blogs do not meet the condition of periodicalness (in the narrow and broad sense). In this case, it needs to be observed that the press law only mentions minimal intervals, but there is nothing about greater frequency of changes, and Internet counterparts of the printed press update their contents permanently. It must then be recognised that under specific conditions, which anyway is indicated by some jurisprudence, blogs may constitute press within the meaning of the press law, and so a blogger can, under specific conditions, be a journalist (Wilińska & Zelek, 2010, pp. 25–27; Siwicki, 2014, pp. 85–105; Sobczak, 2014, pp. 25–42). Undoubtedly, a blogger's declaration of their status and the registration of their blog website as the press is of great importance. The statutory requirement of press registration in court applies not only to a blog but to all that fit the statutory definitions of a daily and a periodical (see Art. 20 and 45, Journal of Laws 1984, no. 5, item 24, as amended).

It can therefore be assumed that under specific conditions, in connection with the performance of tasks set by the special services, Eryk Cziga may evince characteristics typical of a journalist and enumerated by the press law. Hence, the officers who conduct further operational and investigative activities, based on disinformation provided for Eryk Cziga, without prior consent for such activities violate the prohibitions specified in the Act on the *Internal Security Agency and the Foreign Intelligence Agency*. Thus, on account of the abuse of powers in the form of activities requiring a permit from the Head of the Internal Security Agency (Art. 37(2) of the Act on ABW and AW), the officers' actions can be regarded as relevant from the criminal law perspective, and associated with liability under Art. 231 §1 of the *Criminal Code*, i.e., the abuse of authority and complicity in this case. In the circumstances thus outlined, it is clear that the officers exceed their authority or commit nonfeasance in office, thereby acting to the detriment of the public or private interest. It bears recalling that in Art. 153d of the Act on ABW and AW, the legislator criminalises secret collaboration with journalists. Therefore, it can be assumed that the officers meet the criteria for the provision of Art. 231 §1 of the *Criminal Code*, in concurrence with the provision of Art. 153d §1 of the Act on ABW and AW, in connection with Art. 11 §2.

Another legal issue is the goal that the officers aim to achieve in relation to Eryk Cziga. If the goal was to turn the academic into a social hub that, through his own website, blog, and Twitter account, affects contents and information in the public sphere using the materials provided

by the service, then the matter should additionally be considered in the light of the criminal provisions, in the light of the Act on ABW and AW. As indicated earlier, Art. 153b of the Act on ABW and AW criminalises exerting influence on, *inter alia*, journalists using information obtained during or in connection with the performance of official duties. Thus, in a situation like this, the officers of the Internal Security Agency or the Foreign Intelligence Agency co-opt a journalist to act as a secret collaborator so that they can later affect his activity.

However, one should draw attention to the difference between the prohibition of recruiting journalists as secret collaborators (Art. 37, section 1 of the Act on ABW and AW), exclusion of this prohibition (Art. 37, section 2 of the Act on ABW and AW) and the offence of unlawful use of information (Art. 153b of the Act on ABW and AW). Permission to recruit a journalist does not preclude the possibility of fulfilling the criteria for the prohibited act of unlawful use of information. Even if the special service officers have been allowed to recruit a journalist, they may still unlawfully affect their actions. One should recognise that the use of contents, which are the object of operational or analytical activities by the officers, and which are the goal with regard to the dissemination done by the journalist via social media, fulfils the criteria for the act specified in Art. 153b of the Act on ABW and AW. If in the case in question, the officers had not obtained permission to recruit Eryk Cziga but had still done it and then exerted an influence upon him so that under the pretext of assisting the services, he was performing their tasks by way of disseminating materials via his own social media accounts, then the officers might have been charged, the legal classification being the concurrence of the following provisions: Art. 231 §1 of the *Criminal Code* in concurrence with Art. 153d §1, and in concurrence with Art. 153b of the Act on ABW and AW, in connection with Art. 11 §2 of the *Criminal Code*, and with complicity.

Anna Karga's actions in the first part of the story are legally irrelevant under the Act on ABW and AW and the *Criminal Code*. The situation would be different if she were an officer of the special services, acting as an illegal sent at the university. If we accept that the officers were aware of the goal behind the activities and of the violation of the act with regard to being allowed to recruit the journalist for secret collaboration, then depending on the degree of involvement and the significance of her role, Anna Karga might be ascribed responsibility for complicity (Art. 18 §1, second sentence) or aiding and abetting (Art. 18 §3) in connection with Art. 231 §1 of the *Criminal Code*, in concurrence with Art. 153d §1 of the Act on ABW and AW, in connection with Art. 11 §2.

Another noteworthy thing is Anna Karga's role towards the end of the story, wishing to either take revenge or bring discredit on Eryk Cziga. As she fears being exposed in the scientific community, she begins disseminating slanderous information about him. Polish criminal law distinguishes two types of offence related to the abuse of the freedom of speech. (1) insult, and (2) slander. An insult violates a person's dignity, which can be exemplified by abusive language or damaging his or her reputation. Thus, insulting in nature can also be evaluative statements whose contents will be at variance with the truth while ascribing to others improper behaviour or characteristics, e.g., at odds with the law, ethics or

convention. In this context, the crux of the insult is the statement evaluating a given person's alleged characteristics or conduct. An insult also encompasses statements suggesting immoral conduct, committing crimes or possessing certain qualities (e.g., disease, deviation, addictions). Compared with an insult, slander not only violates a person's dignity but also publicly humiliates him or her, risking the loss of public trust needed to hold a position, pursue a profession or conduct a certain activity. Neither an insult nor slander needs to be realised publicly; they do not need to be practised directly in relation to the aggrieved party either, but they need to be directed at a specific individual (Konarska-Wrzosek, 2020, pp. 1055–1064, 1073–1077; Giezek, 2021, pp. 746–760, 772–781).

If we accept that an accusation of taking and being addicted to drugs insults Eryk Cziga, as well as humiliates him in the eyes of the scientific community, a member of which he is, puts him at risk of losing the public trust needed to pursue the academic profession and conduct research as part of scientific teams, then through her conduct Anna Karga fulfils the criteria for an insult and slander. If Anna Karga acted only as an associate of the special services, she would be in for a charge with two offences prosecuted by a petition, fulfilling the criteria found in Art. 212 §1, in concurrence with Art. 216 §1, in connection with Art. 11 §2 of the *Criminal Code*. However, if Anna Karga were an officer of the special services, slandering Eryk Cziga during or in connection with the performance of her duties, her actions would fulfil the criteria found in Art. 231 §1, in concurrence with Art. 212 §1, in concurrence with Art. 216 §1, in connection with Art. 11 §2 of the *Criminal Code*. If the slanderous statements made by Anna Karga had earlier been inspired by the officers encouraging her, then the officers would be criminally liable, with the concurrence of the following provisions: Art. 231 §1, in concurrence with Art. 18 §2, in connection with Art. 212 §1, in concurrence with Art. 216 §1, in connection with Art. 11 §2 of the *Criminal Code*.

Anna Karga's behaviour is relevant in the light of criminal law, and so it is in the light of civil law because an insult and slander infringe personal interests understood as dignity. It results from the fact that personal dignity, which is the object of the negative influence of an insult, constitutes an internal sphere encompassing man's perception of his or her own value and expectation of respect from others. Here, the infringement of personal interests is the case when it evokes a sense of violation of non-material and individual values related to man's feelings and mental state. A good reputation, which is the object of the negative influence of slander, constitutes an external sphere encompassing a good name, i.e., an opinion others have about a given person. Hence, levelling accusations of improper conduct in private and professional life or public activity, which tarnishes a person's reputation, risking his or her loss of trust needed to conduct the professional activity, is an example of the violation of personal dignity (cf. Art. 23 and 24, Journal of Laws 1964, no. 16, item 93, as amended; Judgment of the Supreme Court of 19.11.2003, V CK 2/03; Judgment of the Supreme Court of 2.02.2011, II CSK 431/10; Judgment of the Appeals Court in Warsaw of 24.04.2013, ACa 1461/12; Judgment of the Supreme Court of 23.07.2015, CSK 549/14; Szczechowicz, 2012, pp. 164–176; Grzeszak, 2018, pp. 7–40).

Anna Karga's conduct may also be considered from an ethical viewpoint against the backdrop of the academic community itself. One should remember that an academic must observe the principles of social coexistence, good academic practices, and professional ethics. Besides, academics should steer clear of situations leading to a conflict between obligations towards the university and external entities, as well as conflicts of interests. Failure to abide by these principles often leads to disciplinary liability due to a gross dereliction of duty, which in particular cases may be examined by university ethics committees.

Next to the legal assessment, it is worth considering the officers' activities from the viewpoint of criminal tactics. In the abstract case study, when meeting Eryk Cziga, the officers pass themselves off as employees of the department of strategic threats at the Internal Security Agency. Noteworthy, the subjects they touch upon concern strategic threats, but the main goal they were after was to recruit a secret collaborator under cover of helping the Polish counter-intelligence. The help was *de facto* about performing actions by the recruited agent of influence in the media sphere (Klejnowska, 2004, pp. 102–103; Netczuk, 2007a; Netczuk, 2007b; Mąka, 2010, pp. 150–173; Szumski, 2010, pp. 195–208; Szumiło-Kulczycka, 2012; Teluk, 2013, pp. 167–191; Horosiewicz, 2015; Herbowski, 2019; Miłkowski, 2020, pp. 304–339). Eryk Cziga's main task was to post comments and develop longer narratives on the energy policy pursued by the European Union and the Federal Republic of Germany in the context of creating the Polish national interest. So, it would be unlikely for the Internal Security Agency to conduct combined operations to repudiate foreign narratives regarding specific public policies from other countries. A more likely scenario is that the portrayed officers act undercover, under the so-called "false flag", whereas they are officers of the Polish Intelligence Agency. It also results from the fact that the responsibilities of the Intelligence Agency also include detecting and counteracting external threats to security, defence capabilities, independence, and electronic intelligence. The very fact that the officers are using IDs of the Internal Security Agency or any other Polish special service is irrelevant because such services can lawfully use any legitimation documents, even ones of rival special forces (Lizak, 2013, pp. 142–153; Prusak, 2013, pp. 7–35).

Ending and Conclusions

The object of analysis in the text is the problematics concerned with the possibilities and limitations of recruiting secret collaborators by Polish civilian intelligence. In order to elaborate the material scope of the analysis and to present the conclusions in the text, the following research questions have been formulated:

(1) *What are the main methods for recruiting secret collaborators by intelligence services?*

The main methods employed by the Polish civilian intelligence with regard to the recruitment of secret collaborators include: (1) invoking ideological reasons (e.g. assistance to the state or special services), (2) finding individuals according to some special personality

pattern (e.g. a sense of being needed by the recruiters, evoking a feeling of being special in the recruited, creating an air of secrecy and participation in something special), (3) finding individuals with legal problems, (4) offering personal and financial gains. The first two methods are often employed while recruiting academics working at Polish universities or individuals holding public offices; sometimes, these methods are enriched with financial offers. However, it must be noted that providing or promising financial or personal gains to recruited persons depends on the services' needs; the more unique skills a person possesses, the more frequently such offers are used as leverage. First of all, use is made of methods based on ideological argumentation and personality-related susceptibility. As for scientists, sometimes the method draws on mixed ideological elements, personality-related and financial susceptibility. This operational style of the special services is more or less depicted in the abstract case study presented in the text. The aim is to effectively supervise the secret collaborator, who is assigned tasks, accounts to the supervisor for the work done, and is bound by financial appreciation. Of course, the service will choose different methods for operational activities with regard to a specific kind of crime. It is because a member of a criminal group, e.g., one engaged in fuel or tax offences, will have a different motivation than an academic. For a criminal, the motivation might be a special kind of protection or a possibility of changing his legal standing in preliminary or court proceedings.

It is also noteworthy that the findings made based on research into espionage with regard to the motivation of the individuals engaging in collaboration with a foreign intelligence service remain relevant; they include (1) motivations following from the desire for personal and financial gains (money, professional promotion, commendations and awards), (2) personal motivations (e.g. a sense of injustice and harm, desire for revenge), (3) personality motivations (a variety of negative personality traits), (4) motivations related to life situations (e.g., critical situations in personal or professional life, problems with the law, or expected problems of this type).

(2) What limitations on recruiting secret collaborators by the civilian intelligence services in Poland can be indicated?

The limitations can be divided into formal and non-formal ones. The former include those that are the object of the institutional and legal analysis in the text. The Polish legislature has introduced statutory limitations in relation to individuals performing certain functions and pursuing certain professions. It is worth noting that when changes were introduced in the higher education system, the legislator eliminated some negative formal reasons for recruiting such persons as vice-presidents and heads of basic organisational units at public and private universities. It seems that this may negatively affect the transparency of the operation and autonomy of the academic milieu. The non-formal limitations include those related to the lack of trust in Polish special services. It results from the public perceiving them as the domain of politicisation, partisanship and non-formal influence on public and economic life. All these opinions are likely to significantly affect the possibility of recruiting

secret collaborators from among Polish citizens. Public opinion is firmly convinced that the Polish authorities do not guarantee the protection of secret collaborators working for the good of the state, which is connected with the presentation of the report on the activity of the military services in 2007. The report revealed some collaborators directly and others indirectly, including foreign collaborators.

(3) What potential threats related to the abuse of powers by the civilian intelligence services in Poland can be indicated with regard to the recruitment of secret collaborators?

As in the case of the limitations, in the case of potential threats related to the abuse of powers, one can speak about formal and non-formal aspects – both types are the subject of the abstract case study presented in the text. Because of the statutory limitation, Polish intelligence must not secretly collaborate with individuals performing certain functions and pursuing certain professions. In this regard, potential abuse of the powers vested in the officers may give rise to criminal liability. Besides, the legislator has criminalised a special kind of relations consisting in the use by the intelligence officers of the information obtained during or in connection with the performance of official duties to influence, *inter alia*, the activity of public authorities, broadcasters, editors-in-chief and journalists. Thus, in this case, potential abuse of the powers vested in the officers may result in criminal charges brought against them.

The abstract case study presented in the text indicates the potential use of the gaps resulting from the vague status of bloggers in light of the press law. It is particularly significant with regard to the high dynamics of changes in press forms and techniques. As the development of network society and various social media progresses, new types of journalism may evade the statutory prohibition of recruitment.

Another gap is the statutory wording, whereby the intelligence service “may not, while performing its tasks, make use of secret collaboration....” However, it is not indicated what form this collaboration is to take – *de iure* or *de facto*. In the former, collaboration would be the case if the recruited individual were formally registered; in the latter, it would also mean the collaboration in which a given individual was used to obtain information, but without his or her formal registration. Therefore, it is visible that the latter case offers great possibilities for overstepping the statutory restrictions on recruitment.

Another potential threat resulting from the abuse of their functions by intelligence officers may consist in influencing individuals found to be of interest based on the collected compromising material concerning their private or professional life. A variant of this type of negative influence is the case described in the abstract case study, where the individual recruited may become an object of overt discredit by means of disinformation spread in the environment directly by the officers or indirectly by their agents of influence.

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