



MAIN STAGES OF ESTABLISHMENT OF THE SYSTEM OF PROTECTION OF STATE SECRETS IN POLAND IN THE SECOND HALF OF THE 20th CENTURY – IN THE FIRST HALF OF THE 21st CENTURY: HISTORICAL AND LEGAL ANALYSIS

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Abstract- Today Ukraine builds its own system of protection of state secrets. Significant quantity of legal acts regulating this process has already been adopted. However, changes in socio-political life, dynamic development of this domain in the modern world encourages researchers to find optimal mechanisms for the protection of state secrets. That is why scientists study not only the experience of protecting of their country's secrets, but also study this area of foreign countries.

Keywords: state secrets, socio-political life, protection

I. INTRODUCTION

In our opinion, it is important to study the experience of foreign countries, which after the Second World War came under the control of the USSR under the Warsaw Pact and built a system of protection of state secrets in view of this military-political bloc's activities. In the 1990s, these countries did much to restructure their own system of protection of state secrets. The experience of changes in these countries in the field of protection of state secrets can be useful and relevant for the development of such a system in Ukraine. These problems are currently little studied by representatives of historical science. Briefly outlined issues were the subject of study of some Ukrainian scientists [1; 2].

The aim of the paper is to study the evolution of the system of protection of state secrets in Poland in the second half of the XXth century– at the beginning of the 21st cent. In view of the specified aim of our research its main task consists in carrying out the historical and legal analysis and determination on its basis of the main stages (periods) of system of protection of state secrets in Poland through which it passed within the outlined chronological framework.

Historiography of the system of protection of state secrets in Poland

In the 20-30s of the 20th century the protection of state secrets in the USSR was carried out on the basis of non-transparent law, and subordinate legislation, government or CPSU regulations, various instructions [3]. The main ones were: "Instructions for ensuring the preservation of state secrets in institutions and enterprises of the USSR", 1948, 1956 and other years; "Instructions for ensuring the regime of secrecy in the ministries, departments, enterprises, institutions and organizations of the USSR", the last № 0126

(1987) and the List (Code) of information that constitutes a state secret. On the basis of government resolutions, enterprises, institutions, and organizations that carried out activities related to state secrets issued their administrative acts. Within 5-10 years, the Instructions and Lists were constantly updated. These principles were extended to the countries of Eastern Europe – the parties of the Warsaw Pact, including Poland.

Thus, on 26 October 1949, the Council of Ministers of Poland adopted a Resolution "On the protection of state and official secrets" [4]. In fact, this regulatory legal act in Poland introduced a post-war system of protection of state secrets and criminal liability for its dissemination under the principles of Soviet law. This document regulated the mechanism: collection, storage, transmission, dissemination or revelation of information by third parties (documents, other items) that were a state secret; collection, storage, transmission, dissemination or revelation of information that was a state secret by an official (documents, other items), which were obtained in connection with the performance of official duties, as well as methods of their protection.

It was assigned the stamp of accessing restriction "Top Secret" and "Secret" (other documents and items that contained a state secret) to the Resolution of the Council of Ministers № 282 "On the organization of protection of state and official secrets" (2 July 1959), bulletins that constituted a state secret (documents and objects of special importance to state security, dissemination of which could cause extremely serious damage). Rely upon the Resolution of the Council of Ministers № 282, Polish enterprises and institutions that carried out activities related to state secrets issued their own administrative acts. In order to strengthen the supervision over the protection of state and official secrets, collegiate organs were convened annually in ministries and departments.

Decree № 70 (31 March 1960), issued by the Minister of Internal Affairs in agreement with the Minister of National Defense "On the handling of secret and top secret documents of special importance in the country" required to notify the competent authorities (militia, prosecutors, Ministry of Interior, etc.) on cases of loss of a document or other violation of a state secret. This Decree became a typical instruction on the handling of secret documents, top secret documents, as well as geodetic, cartographic and geological documents, which were state and official secrets.

The order of the Minister of Internal Affairs № 0101 (25 May 1960) "On the protection of state and official secrets in the Ministry of Internal Affairs" established the procedure for consideration of cases that contained state secrets. The heads of all organizational units were to monitor constantly the state of secrecy and follow the rules for handling such documentation.

The Minister of the Interior also issued a secret order № 099 (8 June 1961) "Regarding the handling of mobilization documents." Guided by the standard instruction (March 31, 1960), this order introduced a separate instruction specifically for the handling of mobilization documents, as well as a separate list of information in the field of mobilization issues. According to these regulations, all mobilization documents had to be marked with the letters "MOB". The destruction of such documents was to be carried out after the protocol was drawn up [5].

The letter of the Minister of the Interior № 5 (6 October 1963) regulated the handling of documents that were official and state secrets received from abroad and sent abroad. As the information contained in these documents was particularly important for the interests of Poland or the allied countries, they were classified as "Top Secret", "Secret", and changes in the security features of originals (and copies) of such documents were prohibited.

On 2 July 1971, the Council of Ministers issued Resolution № 128 "On the organization of protection of state and official secrets". This Decree replaced the strict legal act № 282 (1959). Thus, the system that had existed since 1959 was modified. The new Resolution made adjustments to the procedure for the protection of state secrets in view of socio-political changes that have taken place in Polish society. The document stated that the head of a central or higher institution - when the issue concerns higher and central authorities, as well as subordinate state and social institutions (all levels); the chairman of the presidium of the national voivodship council - when the issue concerns the national council and its subordinate institutions at all levels; the head of the institution (in the case of state or local authorities) are responsible for ensuring the protection of state secrets. Other principles of protection of state secrets have not changed.

On 30 August 1972, the Minister of the Interior issued Resolution № 89 "On the principles and method of accessing with information constituting state and official secret in the country". This document set out the basic rules for handling documents that contained state secret. Every citizen who had access to classified information was required to read the regulations' content and be notified of criminal liability for violating

them. The employee was obliged to keep state secret both during the employment relationship and after its termination.

On 14 December 1982, the Sejm of Poland passed the Law "On the Protection of State and Official Secrets" [6]. This normative act established the procedure for protection of state secrets, as well as a list of information that constituted state secret. These included information: defense; organization of public order and security; research, design, technological and construction works (related to defense or security of the state); production, which was important for economy; strategic state reserves; means of payment and securities, negotiations and preparation of state contracts, international agreements' content. Official secrets included information that was not a state secret and which the employee became acquainted with in connection with performance of his/her duties in state, cooperative or public organizational unit, dissemination of which could threaten the social interests, legitimate interests of this organizational unit or citizen.

Information that constituted a state secret could be expressed by means of writing (documents), speech (oral reports), sound, images, drawings, marks, as well as in the form of a device, instrument or other means. The law contained the principle that only Polish citizens should have access to state secrets. Admission to secrets was issued in case of need for work, service or study. The citizen had undertaken not to disclose secrets that would be entrusted to him/her. The basis for work with secret documents was to obtain written permission. The law allowed certain categories of Polish government officials to work with secret documents without a permit. There was a list of positions and functions related to access to classified information without the need for permission: persons appointed by the Marshal of the Seimas; employed in the executive and advisory bodies of the Seimas; persons appointed by the Chairman of the State Council, employed in bodies appointed, subordinated to the State Council; persons appointed by the Prime Minister are employed in the main, central and local government bodies. According to the 1982 Law, the stamp of restriction of access "Top Secret" was given to indicate information that was a state secret and was of particular importance for the security and defense of the state; "Secret" – to indicate information that was a state secret; "Confidential" to indicate information that constituted official information.

It should also be noted that during this period, within the framework of cooperation in the field of protection of state secrets under the Warsaw Pact, a special procedure adopted by this organization was applied. It was used by all countries participating in the military-political bloc.

The order in the field of protection of state secrets was established in Poland in the early 80s of the 20th century and lasted until 1989. It was during this period that the "velvet revolutions" took place in Eastern Europe, and the system of political cooperation within the framework of the Warsaw Pact collapsed.

Thus, we can single out the first stage of the formation of the system of state secrets in Poland - from the 1940s till 1988. This period was characterized by the spread of Soviet principles of protection of state secrets to Poland of political cooperation within the framework of the Warsaw Pact.

Analysis of modern methods of protection of state secrets in Poland

The system of protection of state secrets in Poland underwent many changes in 1989-1998. This was a consequence of political changes in this country, as well as changes in the rules of public administration functioning. Some state bodies (for example, the State Council) were abolished, others changed their powers. In our opinion, this is the second period in the process of establishing system of protection of state secrets - the construction of its own independent system of protection of secrets, taking into account the experience of European and Euro-Atlantic integration of Poland.

On 22 January 1999, the President of the Republic of Poland signed the Law "On Protection of Classified Information" [7]. Annex 1 to this law contained a list of types of information that may constitute a state secret. This law prompted changes in the legal framework governing the protection of the country's secrets. The process of bringing the legislation in line with the requirements of time lasted until 2005, and its purpose was to adapt Polish legislation to the provisions of both the North Atlantic Treaty Organization (NATO) and the European Union. In addition, the new legislation took into account the growing role of the IT sector, which was used in the daily activities of public administration. These changes concerned: definition and designation of classified information; time limits of protection; teaching; the necessary documentation for the protection of classified information.

The 1999 Law defined the system components of protection of classified information, which included: personal security, together with procedures for controlling access to information; physical security, which contained the requirements and methods of selection of measures of physical and technical protection;

ICT security, which is based on the application of accreditation process and certification of ICT systems; industrial safety.

The very concept of a state secret was corrected in this Law. The state secret included the information, the unauthorized dissemination of which could pose a significant threat to the main interests of the Republic of Poland in relation to state policy, defense, security, international or economic relations of the state. It must have been classified information in accordance with Art. 23, 24 of this Law.

Annex 1 to the Law "List of types of information that may constitute a state secret" (1999) defines information that was classified (classified) as "Top Secret". This was information on the most important defense issues, public safety and economic interests of the state. In particular, these were the following groups of information: information on public administration and command system of the Polish Armed Forces; economic and defense issues (for example, the Central Plan for Economic Mobilization, militarization, research important for state security and defense); operational activities of the Armed Forces; operational and intelligence activities of state security services (including personal data of their officers, soldiers, as well as those who were authorized to carry out operative- intelligence activities); protection of classified information (including ICT networks, passwords and access codes to devices used to store, process and transmit information).

Data with restriction stamp "Secret", were contained in the appropriate form, which were divided into the following groups: economic and defense issues (including voivodship and departmental plans for economic mobilization, assumptions about state funding in a state of increased defense readiness and war, special defense industry production; construction and engineering facilities to expand the area of projected hostilities, state telecommunications network for defense purposes, provincial civil defense plans, state reserves in case of war, information on persons suspected of carrying out activities detrimental to security, defense, independence, international position of the state, system of state border protection, information about the strategic potential of state and public procurement, technology of production and protection of documents of special importance to the state (including banknotes and excise stamps, identity cards and securities issued by the State Treasury); diplomatic service (including diplomatic mail, protection of diplomatic and consular posts); trade in special equipment (including utilities). The 1999 Law also defines information that includes classified information as "Confidential".

In 1999-2010, significant changes were made to the Polish legislation governing state secrets. This was a consequence of systemic changes in Poland, as well as the rules of functioning of public administration. The territorial division of the country, as well as the role and competence of many authorities have changed. Legislation governing the protection of state secrets was supplemented by the provisions of legislation in this area of the North Atlantic Treaty Organization (NATO) and the European Union. These are, first of all: the Agreement between the Parties to the North Atlantic Treaty on the Protection of Information, concluded in Brussels on 6th of March, 1997; EU internal legal acts: Commission Decision 1999/218/EU (25 February 1999) on procedures for accessing to classified information held by the Commission by officials and servants of the European Commission [7]; Commission Regulation (C (2000) 3614) (29 November 2000 [8]).

On 5 August 2010, a new Law "On Protection of Classified Information" was adopted in Poland [9]. The law defined the concept of classified information. Depending on information content and expected dissemination consequences, classified information includes information on: protection of independence, sovereignty and territorial integrity of Poland; internal security and protection of the constitutional order; alliances and international position of Poland; the country's defense capabilities; economic interests of Poland; data identifying officers, soldiers and employees of services responsible for the performance of intelligence or counterintelligence tasks, implementation of operative and intelligence activities; data on activities of officers, soldiers or employees in relation to their operational and intelligence activities, etc. This document also establishes the seals restricting access to classified information. Classified information was circulated in various forms: in the form of a document, object (including device or equipment), data set, image and sound (or their recording). This information is protected in any form.

This normative act also regulated the subjects' activities of protection of state secrets, in particular: a) public authorities, including: the Sejm, the Senate, the President of the Republic of Poland, public administration bodies, local government bodies, the National Bank of Poland; other subordinate organizational units; courts and tribunals; state control and human rights bodies; organizational units subordinated to or under the supervision of the Minister of National Defense; state and legal entities; state organizational units; organizational units subordinated to public authorities or under their supervision; entrepreneurs who intend to apply or apply for conclusion of agreements related accessing to classified

information or implementation of such agreements and performance of tasks related accessing to classified information, on the basis of legal provisions.

From this document you can also learn about the most important elements that make up the system of protection of classified information in Poland. It is based on: information security, which includes the basis of procedure for controlling access to information; security based on risk and risk assessment procedures for classified information (this provision did not exist in the 1999 Law).

Depending on these elements, the choice of adequate measures was proposed: physical and technical protection, taking into account the needs of particular organizational unit; security based on ICT accreditation and certification process using.

The legal basis for the protection of classified information during this period were also: bilateral agreements between Poland and other countries (for example, the Agreement between the Government of the Republic of Poland and the Government of the State of Israel, presented by the Ministry of Defense on mutual protection of defense and military cooperation 24 February 2011 or the Agreement between the Government of the Republic of Poland and the Government of the French Republic on the Mutual Protection of Classified Information, signed in Warsaw on 28 May 2008, acts of international law signed by Poland in connection with accession to international organizations are usually multilateral. The parties to the North Atlantic Treaty on the Protection of Information prepared in Brussels on 6 March 1997, the Agreement between the Government of the Republic of Poland and the OCCAR Armaments Cooperation Organization on the Protection of Classified Information on the Implementation of the ESCCOR OCCAR Program, signed in Warsaw on 29 April 2009 and in Bonn on 4 April 2009. May 2009; domestic legal acts of international organizations of which Poland is a member (for example, Commission Decision 1999/218/EU (25 February 1999) on the procedures under which officials and servants of the European Commission may have access to classified information held by the Commission.

There is a bilateral agreement between Poland and Ukraine, which regulates the protection of state secrets – the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Poland on mutual protection of restricted information signed on 27.08.2015, ratified on 21.09.2016, entered into force on 01.01.2017 [10].

Thus, we can state that the third stage of compiling the system of protection of state secrets in Poland began in 1999 and continues to this day.

Considering the research the authors can conclude that the system of protection of state secrets in Poland in the second half of the XXth century – at the beginning of the XXIst century has passed through 3 main stages (periods) of formation. The first stage (1949–1988) is characterized by the reconstruction and creation of a system of protection of state secrets on Soviet principles because this process was influenced by the USSR under the Warsaw Pact. The second stage (1989–1998) – the construction of its own independent system of protection of secrets, taking into account political changes in Poland, as well as changes in the government' rules after the "velvet revolution" and the collapse of the Warsaw Pact. The third stage (1999) is now a period of development of Polish legislation governing relations in the field of state secrets and bringing it into line with the legislation of this area of the North Atlantic Treaty Organization and the European Union, international treaties and international standards.

REFERENCES

1. Guz A.M. (2007). History of information protection in Ukraine and leading countries. Tutorial. Kyiv: KNT Publishing House.
2. Huz A.M. (2019). The current state of providing information with limited access to NATO and Ukraine. *Reformuvannia natsionalnoi bezpeky: istoriia, suchasnist, perspektyvy: Materialy III pidsumkovoï naukovo-praktychnoi konferentsii* (pp.68-69). Kyiv: Institute of UDO of Taras Shevchenko National University.
3. Okipnyuk V.T. (2018). Legal regulation of information protection with limited access in Ukraine in the conditions of totalitarian regime: historical and legal analysis. *Informatsiina bezpeka liudyny, suspilstva*, 2 (24), 125–131 [in Ukrainian].
4. Resolution of the Council of Ministers of Poland "On the protection of state and official secrets". (October 26, 1949). *Zhurnal zakoniv Polshchi*, 55, 437. Retrieved from: <http://prawo.sejm.gov.pl>
5. Liderman K. (2012). Information security. PWN Publishing House, Warsaw. 67-82.
6. Law of the Republic of Poland "On Protection of State and Official Secrets" (December 14, 1982). *Zhurnal zakoniv Polshchi*, 40, 271. Retrieved from: <http://prawo.sejm.gov.pl>

7. Law of the Republic of Poland "On Protection of Classified Information" of (January 22, 1999). *Zhurnal zakoniv Polshchi*, 1999, 11. 95. Retrieved from: <http://prawo.sejm.gov.pl>
8. Official Journal EC L 80 (March 25, 1999). Retrieved from: <https://eur-lex.europa.eu>
9. Official Journal EC L 308 (December 8, 2000) (with changes and additions). Retrieved from: <https://eur-lex.europa.eu>
10. Law of the Republic of Poland "On Protection of Classified Information" (August 5, 2010). *Zhurnal zakoniv Polshchi*, 2010, 182, 1228. Retrieved from: <http://prawo.sejm.gov.pl>
11. Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Poland on mutual protection of information with limited access. Retrieved from: https://zakon.rada.gov.ua/laws/show/616_252#Text