



Classified Information Protection in Poland: Traditions and the Present Day

Stanisław TOPOLEWSKI¹

¹Siedlce University of Natural Sciences and Humanities; stanislaw.topolewski@uph.edu.pl,
ORCID: 0000-0001-8268-3754

DOI: <https://doi.org/10.37105/sd.61>

Abstract

Acquiring information that has an impact on a country's security, i.e. its independence, sovereignty and international position, by unauthorized persons, whether from another country's intelligence services or criminal groups, may have far-reaching consequences. Therefore, to preserve the stability of the state and give a sense of security to its citizens, the most important task and duty of the government is to protect them. This can be provided by an efficiently functioning system that will guarantee restrictions on access to classified information, its proper processing, as well as the use of appropriate and sufficient physical and ICT security measures. For this reason, this system requires at the state level precisely defined rules and norms based on the law, defining the principles of creating classified information, how to protect it and sanctions that can be applied in the event of non-compliance. The protection of information having a significant impact on the functioning of the Polish state in each period of its existence was an important element of defense and security policy. After regaining independence, the protection of state secrets took on special significance both for the country's existence and the foundations of its existence. It was realized that their disclosure could be fatal to its organization and functioning, as well as defense capabilities. The presented material presents the evolution of the protection of classified information in Poland, and its importance for the security and defense of the state by ensuring the effectiveness (concealing) of actions aimed at their implementation.

Keywords: information protection, secrets, security.

1. Introduction

Protecting information is present in almost every period of the history of civilization. Even in ancient times people had to protect state and military secrets. Subjected area is important, because unauthorized disclosure of information can implicate threats to national and international security (i.e. terrorism) (Shapiro, and Siegel, 2010).

The purpose of this research is to present the evolution of classified information protection in Poland and to show its importance for the state security.

Research problems can be reduced to the following questions: (1.) what was the process of creating and shaping the system of classified information protection in Poland and (2.) which elements of this system remain still valid?

This paper is more theoretical, than empiric, so the methods used are characteristic for the social sciences and humanities: analysis and criticism of the literature and the method of document analysis. Induction, analysis, synthesis, comparison and generalization were also useful.

The professional literature so far has lacked a comprehensive elaboration on this problem. This particularly applies to the period from the establishment of Polish statehood until the partitions and the time after World War II to political changes in 1989.

2. Middle ages to the beginning of XX century

In medieval Poland, the law, which was most often the so-called customary law, it stated that the most serious crime against the state and its interests was the crime of majesty and the crime of betrayal. The second group of the most serious crimes was betray-

al, whose special forms were surrendering the castle to the enemy or bringing the enemy into the country (Bardach, 1957). Life and body punishments were imposed for the most serious crimes including treason (Bardach, 1957).

The Constitution of the Free Coronation Sejm of 1588 further specified the concept of unauthorized transmission of information, treating such conduct as acts that “took place when those who rebelled against the Commonwealth, communicating with the crown enemy for crown damage, took secrets of the Republic entrusted to the crown enemy, surrendered castle on collusion - touched *pacta et foderia* with outsiders, rebellion actually showing or any other offense committed by *Contra Rem. Publ*” (Bardach, 1957). Attention should be paid to the fact that, as a rule, for the first time not only betrayal in the face of the enemy is mentioned, but also the disclosure of the entrusted secrets of the Commonwealth. These crimes were prosecuted *ex officio* by special royal officials called instigators, who, as public prosecutors, acting on behalf of the law, mainly dealing with complaints about betrayal and insult to royal majesty, always acted in consultation with the Grand Marshal. The director also lodged complaints with the tribunal against all dignitaries of the state (Kamiński, 1928).

Michał Pac's Military Articles called for “launching spies, a foreigner and a stranger, including peasants, no hide or handmaid receive without responding to Captain or Captain, or Lieutenant and Hetman himself, and who else would be severely punished. The slogans are not meant to be spotted for spies that no one in the camp can avoid, Colonels and Captain from Hetman are to take them and tell the Society about them, but not to announce the time of need”. The Constitution of May 3, 1791 provided – in Chapter VIII – Judicial Authority, through a new Code of Civil and Criminal Rights – death and information for anyone who “as a traitor to a nation colluded with foreign nations, colluded a fortress, castle, etc. to a stranger nation and that it will be separated from all offices and

rights of honor and public” (Kowecki, 1981, p. 98). It was the first constitutional norm in the history of our state that defined treason of the nation as entering into agreement with a foreign nation, and thus not only with the enemy. This norm has not been fully implemented.

3. Second Republic of Poland

From the moment of independence in 1918, Poland has not had uniform regulations concerning the organization and functioning of the provisions on the protection of classified information. Across the sovereign country were in force former, invader legal regulations. (Polok 2006).

Also in the initial period of organizing the Armed Forces of the Second Polish Republic, provisions on the protection of military secrets were not regulated by a normative act. The military authorities issued a number of orders and ordinances, which reminded them of the obligation to keep professional secret (Igielski, 1973).

In the daily order of the Ministry of the Interior No. 51 of February 23, 1919, the rules for dealing with secret correspondence were established, including operational, organizational, budgetary and personnel-officer matters. An obligation was also introduced to place information on appropriate letters to indicate them as “secret” or “confidential”. Registration of secret correspondence was entrusted to officers or specially selected officials. Failure to comply with the abovementioned rules would result in severe court sanctions.

The first basic act regarding the protection of secrets was Circular No. 623 of August 18, 1919 issued by the Polish Ministry of the Interior in consultation with the military authorities, which forbade, among others “Publication in all forms of news”: about the system, composition, number of all types of military troops, their location and changes in

their distribution, changes in their organization, composition and number. As the years went by, the scope of the mystery problems was extended.

Service regulations for the Ministry of Military Affairs of December 10, 1919 (Igielski, 1973) introduced the concepts of official and state secrets. State secrecy was to cover matters of particular importance, while official secrecy covered all cases not yet announced, but these being developed and pending. These documents were divided into secret, confidential and public, and the times of protecting their secrecy were to be determined by heads of departments and independent sections, or upon their individual request - section heads or references. Classification clauses were to be abolished when secrecy was considered unnecessary. It was also important to introduce separate records for secret documents as of January 1, 1920.

After the transition of the armed forces to the peace organization in 1921, new orders and ordinances regulating the protection of secrecy were issued, such as the order of the Chief of the General Staff of February 14, 1922 and the order of the Minister of Military Affairs of August 14, 1922, which concerned office manipulation, records and storage of secret files (Igielski, 1973). Issued on March 18, 1926, the Handling Instructions for Mob Files provided for the registration of this category of secret documentation in a separate “Mob” journal.

However, it is worth noting that during this period, great importance was attached to possible threats to the protection of military secrets and other secrets related to state security. It resulted from Poland’s geopolitical location and possible threats from both east and west. Therefore, at the beginning of the 20th anniversary of the war, the protection of information constituting a clerical secret was regulated. In the Act of February 17, 1922 on the state civil service, Article 24 stipulated that “an official is obliged to keep strictly confidential all matters which he became aware of due to his official position, if such matters were clearly considered confidential,

or if the public good or other official reasons require keeping them secret. An official should keep secret from anyone who is not obliged to report these matters on business, unless the superior or directly higher authority in a particular case releases him from this obligation” (Ustawa, 1922).

The duty of secrecy rested with the official during his active service, as well as after retiring, and after termination of service for any reason. The clerk was also not allowed to provide outside the office information on settled matters of clients and their results (Goryński, 2013).

In the case of irregularities and negligence in securing military secrets or the arms industry, inspections were carried out, additional training sessions were organized, new instructions regulating the issue of secrecy were modified or issued. It has been pointed out many times that espionage is conducive to clutter in offices and archives, and deficiencies in the record of classified materials (Pepłoński, 2002).

Systematic checking (by counterintelligence) covered all civilian employees, candidates for officers and professional masters, musicians, candidates for reserve officers and officers applying for active military service and opinions on conscripts before being recruited (Korzeniowski, and Pepłoński, 2005).

The first part of legislation where we can find a legal veil and secrecy protection was the Regulation of the President of the Republic of Poland, dated 16 February 1928 on Penalties for Espionage and Some Other Crimes Against the State (PRP, 1928a).

In the regulation of the President of the Republic of Poland of October 24, 1934 on certain offenses against the security of the state, for the first time the definition of state secret was defined as “messages, documents or other items that due to their content or quality should be preserved for the good of the Polish State in secret from the government of a foreign state, even if the ordinances regulating official activities did not recognize them as secret, or even keeping them secret

from a certain group of people was impossible”. The regulation also defined the concept of military information (secret) (PRP, 1934).

Also, the Paternal Penal Code of March 22, 1928, introduced by the regulation of the President of the Republic of Poland, dealt with the punishment of behavior directed against state security (PRP, 1928).

The most complete description of the organization and functioning of the protection of secrets was contained in the Instruction on the Protection of Military Secrets reference number OT1, dated September 3, 1932, on the basis of which all commanders, chefs, managers and commanders of independent organizational units were required to issue detailed executive orders, adapting their requirements to local conditions and the specifics of their units.

Due to the number of units to which it related, referring to secret information, there was an Instruction Manual for municipal offices from 1934. Pursuant to its provisions, exclusive access to confidential and secret information was held by the commune head and, with his consent, the secretary of the commune. He kept confidential and secret files.

In 1927, a reform of the office system was initiated, the aim of which was to simplify work and limit the excessive creation of files. In the Ministry of Military Affairs, a draft of office regulations was developed – the Office in peacetime (Biur-1), which provided for the division of files into public, confidential and secret. It was very important that for the first time the rules of managing all the offices were regulated together with securing the military secret for the entire armed forces.

Also in 1928, a Detailed Instruction on the Protection of Military Secret was issued (SSG, 1928), which divided documents into secret, top secret, “mob” and confidential. Both of these normative acts emphasized the destruction of unnecessary secret files in offices.

In 1931 a new version of the provisions of “Biur – 1” and the offices of authorities and institutions of a higher level (Biur-2) ap-

peared (MSW, 1931). The rules for dealing with secret files were to be regulated by the Instruction on Handling Secret and Confidential Documents for DOK VIII (Igielski, 1973), issued as an attachment to these new provisions. An order to limit unnecessary secret correspondence and deal with some minor matters verbally, in person or by phone, was a new element in this manual.

On the basis of the provisions of the "Biur - 2", office regulations for individual military institutions were developed. Many military institutions, in addition to office regulations, have developed their own instructions on how to deal with secret correspondence that adapt the instructions issued by the Ministry of Military Affairs to their own needs.

The press of the 1930s contained information on selected aspects of the organization and functioning of the army, which were eagerly used by intelligence services of foreign countries, especially by the Germans. That is why counterintelligence authorities tried to limit public disclosure of information that could help foreign secret services to learn and unravel military secrets. Therefore, specific topics constituting secrets and subject to protection were designated.

In October 1929, the Ministry of Military Affairs and the Ministry of Justice developed guidelines on the protection of military secrets, which was to be respected by the military press (Ćotytk, 1998). It was stated that meetings of the budget committees of the Sejm and Senate of the Republic of Poland regarding military expenditure remain secret. In the area of military purchases, it was intended to regulate the issue of press advertisements for tenders for military materials. In addition, it was postulated to introduce restricted tenders with the participation of specific companies. A list of topics (issues) that should be banned from publishing was developed. It was also agreed that all information regarding mobilization issues should be secret.

In the summer of 1931, the Ministry of the Interior said that professional secrecy

protection was still far from expectations. The reasons for this state were seen in "... the lack of a sense of the importance of official secret among officials, the dissemination of talkativeness of officials through whom secret and confidential matters go, carelessness during the development of these cases, as a result of which secret files were left on desks in an open room, allowing their access to bystanders (...), printing an excessive number of copies of letters, secret and confidential circulars, often sent to offices whose content is not of interest (...), storing the concept of secrecy and confidentiality in non-confidential letters, which often have a "secret" clause or "confidential" to the detriment of the principle of professional secrecy..." (MSW, 1931, pp. 29-30).

In 1935, then Chief of the General Staff, Brigadier General W.T. Stachiewicz introduced regulations on post censorship in the army during the war (Ryszkowski et al., 2011). Censorship and the post was to constitute a means of preventing the disclosure of various messages, not necessarily constitute a military secret, which could be used by enemy intelligence, or could negatively affect the morale of the army or society. Therefore, it was envisaged to introduce universal postal censorship during the war, which was to include military correspondence both in the field and in garrisons.

In 1936, the head of the General Staff, implemented the instructions for the Military Security Staff Chief of the war (Ryszkowski et al., 2011).

A very important element of the army's training were all kinds of maneuvers and exercises during which systems, tactical solutions and new types of weapons were tested. Therefore, they were particularly vulnerable to all types of surveillance by foreign services. Therefore, efforts were made to prevent them by all possible means. An example would be their introduction into official use: The Instruction on the Protection of Maneuvers and Major Exercises, issued by the Chief of the General Staff after L.m. 2014 / II Information CTO of July 23, 1928, Instructions

for the service of gendarmerie during major military exercises abbreviation Z.2 / 1931, approved by the Chief of the General Staff and Instruction on the protection of field exercises at the level of lower commands (MSW, 1938a).

On March 17, 1938, on behalf of the Minister of Military Affairs, Brigadier General Głuchowski introduced into official use the Instruction on the Protection of Military Secret in the Junkie Labor Corps (MSW, 1938b).

At the end of March 1939, vigilance was introduced in the General Staff, as in all military institutions. This also involved paying special attention to matters of secrecy and compliance with the principle of minimizing access to secret information to the extent necessary for the work performed.

In the works aimed at counteracting espionage activities, a special role was played by Department II of the General Staff of the Polish Army and its field structures (Korzeniowski, and Peplowski, 2005).

The bodies involved in the protection of military secrets were:

- at central level – Branch II of the General Staff (Department II b, having staffing staff and its own agent network;
- in the Corps District Commands – Independent Information Papers
- information officers in units and institutions at the branch level (subject to the content of the counterintelligence authorities, while organization and disciplinary commanders of the unit or institution).

Information officers functioning in military units were to play a special role in the classified data protection system. They were appointed by the commanders from among the unit's staff after prior consultation with the head of the SRI and then approved by the DOK commander (Krzak, 2008). He had an information officer ID and cooperated in the implementation of tasks with the Military Police, police and civil administration au-

thorities. In small units, the commander was to be the information officer.

Classified data protection was usually implemented in two areas: as protection of military facilities as well as military and civilian staff employed in institutions and units.

From the analysis of pre-September 1939 documents regarding the information protection, it was found that espionage (both Soviet and German) and subversive activities were mainly feared. When speaking of subversive activity, the infiltration of the army by communist and nationalist organizations was mainly considered. The above threats were reflected in the then binding military regulations and instructions regarding the protection of secrets.

A lot was done to protect information. A number of different projects were undertaken, from personal checks on people admitted to secrecy, through regulation and control. Secrets were protected quite effectively, mainly with the help of a military counterintelligence apparatus, equipped with a good legal base, as well as through properly organized and conducted training campaigns - making soldiers aware of active military service and society, especially employees of armaments and male youth (Ryszkowski et al., 2011).

4. Second World War

During the creation, organization and functioning of the Polish armed forces in the West, issues related to the secrets protection were also regulated. The legal and normative acts of the period of the Second Polish Republic were referred to, of course, adapting them to the war situation, and also continuing in this respect.

The Supreme Commander and Minister of Military Affairs, Gen. Władysław Sikorski on August 2, 1942 in London by order of *L.dz. 200 / bezp. / Tj.42.* introduced into official use the Instruction on the Protection

of Secrets and Defense Intelligence Works 027/1942 (MON, 1945a).

It should be noted that the provisions on office activities survived unchanged throughout almost the entire period of World War II. It was not until February 23, 1945, that the head of the Ministry of National Defense (MON), Maj. Gen. Marian Kukiel approved and introduced into service the Instruction on the protection of secrets in the field of office (0.49 / 1945) (MON, 1945b). At the same time, he annulled the Instruction on handling secret and confidential letters (No. 1005 - 25 / PS) of August 20, 1931.

Military secrets were protected by criminal law from the beginning of the existence of People's Poland. The first normative act, the provisions of which provided for incurring criminal liability against the obligation to maintain military secrecy, was the Military Code of the Polish Armed Forces in the USSR.

Polish Army Penal Code of 1944 (Article 90, 159 and indirectly 160), (Arndt, 2011, p. 219) made breaking the rules of military secrecy a crime. Article 90 contains a description of the crime of espionage, although the legislator did not require that the person accused of a crime under this provision was proved to be a foreign intelligence's agent (i.e. it was enough for the perpetrator to only collect information constituting the military secret). The legislator of that time allowed the possibility of bringing civilians before military courts, whose action led to the disclosure of military secrets to unauthorized entities.

The first decree regarding the matter of protecting classified information was the Decree of 16 November 1945 on Particularly Dangerous Crimes During the Rebuilding of the State (Polok, 2006). Placing it in the Journal of Laws emphasized its importance and expanded the scope of the 1932 Criminal Code in matters of protecting classified information. The punishment for anti-state activities in the form of collecting, processing and transmitting messages relevant to the PRL (People's Republic of Poland) was the

death penalty or life imprisonment. Cases were handled by the military prosecutor's office, conducting the investigation and preparatory proceedings, regardless of whether the accused person was a civilian or a military officer. The jurisprudence in such cases was handed over to military courts. The problem for the person accused of this type of action was that there were no legal definitions of state and military secrets to which the decree was to be applied. Therefore, court judgments were based solely on the interpretation of military judges, which included determining and "classifying" the validity and seriousness of a particular message or information, which did not have to have the characteristics of information that should be protected (Polok, 2006).

5. Post-II World War to 1989

The first decree regarding the matter of protecting classified information was the Decree of 16 November 1945 on particularly dangerous crimes during the rebuilding of the State (Polok, 2006). Placing it in the Journal of Laws emphasized its importance and expanded the scope of the 1932 Criminal Code in matters of protection of classified information. The punishment for anti-state activities in the form of collecting, processing and transmitting messages relevant to the PRL (People's Republic of Poland) was the death penalty or life imprisonment. The case was handled by the military prosecutor's office, conducting the investigation and preparatory proceedings, regardless of whether the accused person was a civilian or a military officer. The jurisprudence in such cases was handed over to military courts. The problem for the person accused of this type of action was that there were no legal definitions of state and military secrets to which the decree was to be applied. Therefore, court judgments were based solely on the interpretation of military judges, which included de-

termining and “classifying” the validity and seriousness of a particular message or information, which did not have to have the characteristics of information that should be protected (Polok, 2006).

The decree of the Council of Ministers of June 13, 1946 was another legal act setting out the principles for the protection of classified information. It was expanded to include new articles and a minimum penalty for the offenses indicated in it. As in the previous and this decree, there were no definitions defining state and military secrets. Military courts issued final judgments on the basis of evidence and documentation collected by security services.

The protection of broadly understood military secrets was one of the fundamental statutory tasks of the information service. It was implemented, among others, by checking and giving opinions on candidates intended for classified work; selection and consent for the employment of civilian applicants for employment in the army; conducting operational control of persons employed in classified work; informing commanders of military units about irregularities found in the scope of securing classified documents and devices and requesting appropriate actions in this respect; requesting the commanders of military units to remove politically uncertain persons suspected of contact with foreign special services revealing secret data due to talkativeness or lack of responsibility from work related to access to classified information; working out persons disclosing or transmitting documents, devices or other information constituting military secret; informing commanders (appropriate levels) about the loss and search for classified documents (devices, etc.).

It is worth emphasizing that information authorities also prosecuted perpetrators of lost secret documents (devices) and top secret documents, as well as persons disclosing information constituting military secret (Tkaczew, 1994).

The information service attached great importance to securing and protecting se-

crets in the army. The fact that in the years 1944–1948, as many as nine documents devoted to this issue were published .

These documents – as Tkaczew states – showed that the heads of staffs of (equivalent) military institutions and units were obliged to send detailed information about soldiers and civilian employees selected for secret work to the local authorities.

The head of the Personnel Department of the Ministry of National Defense, in ordinance No. 17 of July 1, 1947, ordered that prior to hiring an employee for a contract, he should obtain the approval of information authorities. Also, representatives of military information, both soldiers and civilian employees, decided to work with classified information. The organization of the protection of classified information in the Polish army during World War II in the East and West was slightly different. The main difference was in the adopted standards. In the West, it was a continuation of native solutions from the interwar period. The Eastern system, on the other hand, was based on solutions adopted in Soviet Russia – more restrictive, consisting in very thorough personnel checks, also through operational actions in the search and elimination of so-called enemies of the people, etc., i.e. people hostile to the Polish state and the USSR (former employees of Division II, policemen, leaders and activists of pre-war political parties and bourgeois organizations). The protection of facilities was primarily focused on protection against penetration, surveillance and intelligence.

On March 17, 1946, the Ministry of Public Affairs issued an Instruction on the receipt and transmission of secret correspondence by the Special Post Office of the Ministry of Public Security. It defined the concept of special correspondence, which, according to this instruction, was “secret and top secret correspondence, special (to your own), valuable and ordinary correspondence, which for special reasons should not be sent by post”. Another document regulating information protection issues was the December 31st Office

Chancellery Instruction for the Ministry of Public Security (Goryński, 2013).

An important document on the issue of the protection of secrecy was the resolution of the Council of Ministers No. 282/59 of July 2, 1959 on the Organization of Protection of State Secrets and Professional Secrets. It had the nature of a document intended for internal or secret use, about which the state services and organs knew, and was not made public.

It should also be noted that on the basis of this legislation, the overall scope of messages, documents and other items constituting state secret loophole was introduced, authorizing the President of the Council of Ministers to make the changes to it. Ministers (heads of central offices) were obliged to develop in detail news, documents and other items constituting a state secret in their subordinate departments and to send them to the President of the Central Office for Control of Press, Publications and Performances.

The framework scope referred to was divided into three parts concerning confidentiality due to: national defense; country security; the interests of the national economy.

The aforementioned resolution of the Council of Ministers also contained an exemplary list of information marked as confidential. Managers of organizational units in each of the workplaces played a decisive role in determining the matters in this category.

Further documents regulating the protection of secrets are: Ordinance No. 8 of the Prime Minister of 17 January 1957 on the protection of state secrets when taking photographic and film photographs as well as sketches and drawings of objects important for the defense or security of the State; Ordinance No. 70/60 of the Minister of the Interior of March 31, 1960 regarding proceedings in the country with confidential and secret documents with an attachment in the form of the Instruction of the Minister of the Interior issued in consultation with the Minister of National Defense on proceedings in the country with secret documents special significance as well as geodetic, cartographic and

geological documents constituting state and official secrets; Resolution No. 128/71 of the Council of Ministers of July 2, 1971 regarding the organization of the protection of state and official secrets; Ordinance No. 89/72 of the Minister of the Interior of August 30, 1972 regarding the rules and manner of dealing in the country with messages constituting the state and official secret, together with an attachment in the form of a Model Instruction on the rules and the manner of proceeding in the country with messages constituting the official secret (Hoc, 2010).

The Act of April 19, 1969 (Act of April 19, 1969) introducing the penal code repealed the decree of 1949. The new provisions were a compilation of solutions from 1949 and did not bring anything special in terms of the functioning of the principles of the protection of state and official secrets.

Whereas the first legal act in the rank of a law regulating the protection of classified information in the Polish state was the Act of December 14, 1982 on the protection of state and professional secrets (Ustawa, 1982).

The above Act, comprising of 23 articles, indicated the general principles and delegations to develop and introduce numerous implementing acts. Some ministers used sub-delegations, e.g. the Minister of National Defense, who by ordinance (No. 29 of May 27, 1983) assigned the head of the General Staff of the Polish Army the obligation to regulate in the subordinate ministry the problems of protecting state and official secrets. Detailed regulations were quite extensive and basically known only to persons directly responsible for them.

Pursuant to the provisions of the Act, compliance with it in the scope of state secrets was the responsibility of everyone received a message. In contrast, professional secrecy which bound every employee, regardless of their position, type, place of work and the nature of the employment relationship and force both during employment and after termination (Ustawa, 1982).

During the period in which this Act was in force, three security classifications were ap-

plied: secret of special significance; secret; and confidential.

General coordination in the organization of secrecy protection and determination of detailed rules and methods of dealing with messages constituting state and official secrets was exercised by the Minister of the Interior. It could also occur with applications for an inspection of the protection of state secrets and business in a particular state, social or cooperative organizational unit and delegate a representative to participate in the control (Ustawa, 1982).

6. After 1989 to present times

After the political change initiated by the elections in June 1989, work on a new act on the protection of classified information were undertaken. However, the often changing governments of various coalitions and the emerging political disputes up to 1999 did not allow them to be completed.

In November 1994, the government signed a security agreement with NATO related to the protection of information as part of the Partnership for Peace. In this act, Poland committed itself to comply with Western standards in the field of secrecy protection.

On January 22, 1999, the Sejm adopted the Act on the Protection of Classified Information, which entered into force on March 11, 1999, i.e. on the eve of Poland's accession to NATO (Act on the Protection of Classified Information, 1999). In this respect, it adapted Polish law to the provisions in force in the structures of the Alliance.

The Act of 22 January 1999 on the protection of classified information defined three basic organizational levels for the protection of classified information. The first included the Committee on the Protection of Classified Information operating at the Council of Ministers as an opinion-making and advisory body in the field of protecting classified in-

formation. In 2002, after the amendment to the Act, the committee was liquidated and its tasks were taken over by the College for Special Services – also an opinion-making and advisory body currently operating at the Council of Ministers on the basis of the Act on the Internal Security Agency (ABW) and the Foreign Intelligence Agency (AW), created earlier in 1996. The activities of this Committee in the years 1999–2002 should be assessed as high. It played an important coordinating role in the initial period of implementing the Act and creating a system for the protection of classified information. During monthly meetings, the processes of creating security divisions and appointing security representatives were systematically monitored, issuing guidelines binding for government administration (Zalewski, 2014).

At the second level, state security services operated, which were primarily responsible for controlling compliance with the provisions on the protection of classified information, training and consulting as well as conducting verification proceedings against persons who were to have access to classified information.

At the third level, the Act placed the basic link in the system of classified information protection, namely:

- heads of organizational units in which such information was produced, processed, transferred or stored;
- mandatorily appointed proxies for the protection of classified information and specialized organizational units reporting to them, called “security divisions”.

On April 24, 1999, in Washington, at the North Atlantic Council summit, Poland was accepted into NATO structures, becoming a full member of the collective security system. Thus, we had to meet the tasks that the state structures set for receiving classified information from the Alliance (Schidle, 2015). To this end, the President of the Republic of Poland ratified the agreement with NATO on the protection of information (NATO, 1997)

constituting the basis for the exchange of classified information between the parties to the Alliance, as well as obliging members of the Alliance to establish rules and responsibilities related to the protection of classified information.

All of the projects related to the protection of classified information can be characterized in terms of the types and nature of classified information, as well as the subjective, relating to the institutional sphere. These issues were regulated by the provisions of the Act of January 22, 1999 on the Protection of Classified Information, in which Article 1 Clause 1 generically specified information subject to protection against unauthorized disclosure as all classified information constituting a state or business secret, irrespective of how it was expressed, also during its development.

In the matter of responsible entities and in the context of the above-mentioned Act, it can be stated that it referred to (1) the entities which were obliged by the legislator to comply with the Act, and (2) all other entities, which were classified as directly responsible for the security of classified information.

Regarding the first group, there is no doubt that Article 1 Clause 2 of the Act on classified information, which the obligation to apply the Act related to:

- public authorities, in particular: the Sejm and Senate of the Republic of Poland, the President of the Republic of Poland, government administration bodies, organs of local government units, courts and tribunals, state control bodies and law protection;
- The Polish Armed Forces and their organizational units, as well as other organizational units subordinate to or supervised by the Minister of National Defense;
- The National Bank of Poland and state-owned banks;
- state legal persons and other than those mentioned in point 1-3 state organizational units;

- entrepreneurs, scientific or research and development units intending to apply, applying for conclusion or performing contracts related to access to classified information or performing tasks related to access to classified information pursuant to legal provisions.

The entities directly responsible for information security were:

- state protection services (UOP [*Urząd Ochrony Państwa*, State Protection Office], WSI [*Wojskowe Służby Informacyjne*, Military Information Services];
- heads of organizational units;
- protection representatives;
- managers of secret offices;
- IT security administrators;
- IT security inspectors;
- persons authorized to access classified information.

The Act (in Article 2) defines state and official secrets. A state secret is information specified in the list of types of information constituting Annex 1, whose unauthorized disclosure may cause a significant threat to the basic interests of the Republic of Poland regarding public order, defense, security, international or economic relations of the state.

On the other hand, a service secret is classified information that is not a state secret, obtained in connection with official activities or the performance of commissioned work, the unauthorized disclosure of which could endanger the interest of the state, the public interest or the legally protected interest of citizens or the organizational unit.

Information classified as constituting a state secret was marked with the clause:

- *Ścisłe tajne* “top secret” – in accordance with the list constituting Annex 1 to the Act (Part I, comprised 29 items),

- *Tajne* “secret” - in accordance with the list constituting Annex 1 to the Act (part II, included 59 items).

Information classified as constituting a business secret was marked by the following clause:

- *Poufne* “confidential” – in the event that their unauthorized disclosure would cause damage to the interests of the state, public interest or the legally protected interest of citizens,
- *Zastrzeżone* “restricted” – in the event that their unauthorized disclosure could cause damage to the legally protected interests of citizens or the organizational unit (Article 23).

Depending on the position or commissioned work for which the person applied for, a check was carried out (Article 36, paragraph 1):

- Ordinary – for positions and works related to access to classified information constituting a business secret;
- Extended – for positions and works related to access to classified information marked as “secret”;
- Special – for positions and works related to access to classified information marked as “top secret”.

The Act of January 22, 1999 on the protection of classified information was amended during its validity. The nature of these changes varied: from ordering changes resulting from the amendment or adoption of new laws – to substantive changes in the content of the Act on the Protection of Classified Information.

Both these and other conditions caused that a new Act on the Protection of Classified Information of August 5, 2010 was developed (Ustawa, 2010).

According to the draft act, the essence of the new Act on the Protection of Classified Information is to normalize the system of its protection so that it is maximally effective both in the domestic and foreign sphere, with

simplicity and flexibility of functioning, but without compromising the security of classified information. The basic goal has become the simplification of the existing system and its update.

The purpose of the regulation was to introduce comprehensive, coherent and consistent and easy to apply regulations regarding the protection of classified information. The issuing of regulations changing the current legal status resulted from the need to:

- introduce efficiency mechanisms to the system of classified information protection, including risk management,
- modernize and adapt the classified information protection system to the conditions of modern technologies,
- adapt regulations to changing standards in NATO and the European Union, specified in the provisions regulating the treatment of classified information exchanged in cooperation with NATO and the EU, as well as to analogous rules in force in the internal regulations of other member countries),
- remove gaps, ambiguities and system inconsistencies, and simplify applicable law.

The need to develop a new legal act resulted primarily due to the needs of practice, because the application of the current Act is difficult, and raises doubts in interpretation, and due to need to improve the effectiveness of the classified information protection system.

The Act introduced new definitions of classified information marked with individual clauses.

An obligation was introduced to review all classified documents produced every five years (similarly to the solutions adopted in the structures of the European Union) to determine whether this information still meets the statutory conditions.

The Act introduces the institution of one national security authority responsible for

protecting classified information exchanged with NATO and the European Union (ABW). It imposes an obligation on ABW and SKW to conduct training for heads of organizational units. All persons having access to classified information will be trained in protecting this information at least every 5 years.

The Act abolishes the existing obligation to conduct screening proceedings against persons who are to have access to classified information with the “restricted” clause. Access to this information is possible on the basis of the written authorization of the head of the organizational unit after appropriate training. Also, the accreditation of IT security for information processing systems classified as “restricted” grants the head of the organizational unit, which will operate the system or - in the case of a system that supports multiple entities – the head of the unit organizing system.

It introduces two types of screening instead of the previous three. Normal screening procedures are conducted by security representatives against persons applying for access to classified information classified as “confidential”. Extended verification proceedings are conducted by: ABW or SKW, or to persons seeking access to information classified as “secret” and “top secret”, and in some cases “confidential”.

7. Conclusions

On the basis of this article, we can point out several various analogies. In each of the discussed periods, the leading role in the protection of classified information was performed by special services (counterintelligence). However, they did not bear direct responsibility for this, and their role was mainly limited to advisory, training and supervisory functions. Responsibility for organizing and constantly supervising compliance with the protection of classified information

was the responsibility of the head of the unit (the person responsible for its functioning). Particular attention was paid to granting permission to access classified information, security related to the processing of classified documents, training of persons responsible for the organization of the system, the entire staff of appropriate units and institutions, as well as to supervision and control services.

It should be emphasized that in every period of the state activity, the protection of classified information was always an important element of security and defense. It was known that obtaining information that has an impact on the security of a given country, i.e. its independence, sovereignty and position in the international arena, by unauthorized persons, whether from another country's intelligence services or criminal groups, could have far-reaching negative consequences. Therefore, to maintain the stability of the state and give a sense of security to citizens, the most important task and duty is to protect them. It can be provided by an efficiently functioning system that will guarantee restrictions on access to classified information, its proper processing, as well as the use of appropriate and sufficient physical and ICT security measures. For this reason, this system requires at the state level precisely defined rules and norms based on the law, defining the principles of creating classified information, how to protect it and sanctions that can be applied in the event of non-compliance.

References

1. Arndt, M. (2011). Ochrona tajemnicy wojskowej w prawie karnym Polski Ludowej (do 1969 roku). *Z Dziejów Prawa*, 12(4), pp. 217-234.
2. Bardach, J. (1957). *Historia państwa i prawa Polski*. Warszawa: PWN.

3. Ćwięk, H. (1998). Ochrona tajemnic wojskowych w publikacjach prasowych II RP. *Wojsko i Wychowanie* (12), pp. 54-60.
4. Goryński, G. (2013). Prawne podstawy ochrony informacji niejawnych w Polsce. *Colloquium Wydziału Nauk Humanistycznych i Społecznych*, (1), pp. 99-128.
5. Kamiński, J. (1928). *Historia sadownictwa wojskowego w dawnej Polsce*. Warszawa: Towarzystwo Wiedzy Wojskowej.
6. Korzeniowski, L. and Peplowski, A. (2005). *Wywiad gospodarczy. Historia i współczesność*. Kraków: European Association for Security.
7. Kowecki, J. (1981), *Konstytucja 3-go Maja 1791 r.* Warszawa: PWN.
8. Krzak, A. (2008). *Ochrona tajemnicy w Wojsku Polskim w latach 1921-1939*. Warszawa: Dom Żołnierza Polskiego.
9. MON (Ministerstwo Obrony Narodowej, Centralna Komisja Regulaminowa) (1945a). Instrukcja o ochronie tajemnicy i pracy wywiadu obronnego. Great Britain (CBW, Arch. 43.840, nr inw. 115669).
10. MON (Ministerstwo Obrony Narodowej, Centralna Komisja Regulaminowa) (1945b). Instrukcja o ochronie tajemnicy w zakresie biurowości. Great Britain (CBW, Arch. 43841, nr inw. 11.5670).
11. MSW (Ministerstwo Spraw Wewnętrznych) (1931). *Biurowość władz i instytucji szczebla wyższego. [Przepisy ustalające metody pracy biurowej oraz zasady systemu kancelaryjnego władz i instytucji wojskowych wyższego szczebla, tj. centralnych władz wojskowych, oraz bezpośrednio im podległych instytucji i zakładów]*. Kolekcja regulaminów, instrukcji i aktów prawnych. (Nr inw. 1347). Warszawa: Centralne Archiwum Wojskowe.
12. MSW (Ministerstwo Spraw Wojskowych) (1938a). *Instrukcja o ochronie ćwiczeń polowych na szczeblu niższych dowództw*. Warszawa: Centralna Biblioteka Wojskowa. (Arch. 63954 355.5/4.001.3[438]”1938”). Retrieved from http://zbrojownia.cbw.pl:8080/dlibra/docmetada-ta?id=2102&from=&dirids=1&ver_id=&lp=1&QI=, 30.03.2020.
13. MSW (Ministerstwo Spraw Wojskowych) (1938b). *Instrukcja o ochronie tajemnicy w junackich hufcach pracy*. Warszawa: Centralna Biblioteka Wojskowa. (Arch. 49155, nr inw. 2388). Retrieved from http://zbrojownia.cbw.pl:8080/dlibra/docmetada-ta?id=1815&from=&dirids=1&ver_id=&lp=1&QI=, 30.03.2020.
14. NATO (1997). *Umowa między Stronami Traktatu Północnoatlantyckiego o ochronie informacji, sporządzoną w Brukseli dnia 6 marca 1997 r.* Dz. U. z 2000 r. Nr 64, poz. 640.
15. Peplowski, A. (2002). *Kontrwywiad II Rzeczypospolitej*. Warszawa: Bellona.
16. Polok, M. (2006). *Ochrona tajemnicy państwowej i tajemnicy służbowej w polskim systemie prawnym*. Warszawa: Wydawnictwo Prawnicze Lexis Nexis.
17. PRP (President of the Republic of Poland) (1928a). *Rozporządzenie Prezydenta Rzeczypospolitej z dnia 16 lutego 1928 r. o karach za szpiegostwo i niektóre inne przestępstwa przeciwko państwu*. Dz. U. z 1928 r. Nr 18, poz. 160.
18. PRP (President of the Republic of Poland) (1928b). *Rozporządzenie Prezydenta Rzeczypospolitej z dnia 22 marca 1928 r. w sprawie kodeksu karnego wojskowego*. Dz. U. z 1928 r. Nr 36, poz. 328.
19. PRP (President of the Republic of Poland) (1934). *Rozporządzenie Prezydenta Rzeczypospolitej Polskiej z dnia 24 października 1934 r. o niektórych przestępstwach przeciwko bezpieczeństwu Państwa*. Dz. U. z 1934 r. Nr 94, poz. 851

20. Ryszkowski, M.O. et al. (2011). *O wybranych tajemnicach – bez tajemnic*. Katowice: Instytut Ochrony Informacji i Danych Osobowych.
21. Shapiro, J.N, and Siegel, D.A. (2010). Is this Paper Dangerous? Balancing Secrecy and Openness in Counterterrorism. *Security Studies*, 19(1), pp. 66-98. DOI: <https://doi.org/10.1080/09636410903546483>.
22. SSG (Szef Sztabu Generalnego) (1928). *Szczegółowa instrukcja o ochronie tajemnicy wojskowej*. Warszawa: Centralne Archiwum Wojskowe (sygn. 302.4.676).
23. Tkaczew, W. (1994). *Powstanie i działalność organów informacji Wojska Polskiego w latach 1943-1948*. Warszawa, Bellona.
24. Ustawa (1922). *Ustawa z dnia 17 lutego 1922 r. o państwowej służbie cywilnej*. Dz. U. z 1922 r. Nr 21, poz. 164.
25. Ustawa (1969). *Ustawa z dnia 19 kwietnia 1969 r. Przepisy wprowadzające Kodeks karny*. Dz. U. z 1969 r. Nr 13, poz. 95.
26. Ustawa (1982). *Ustawa z dnia 14 grudnia 1982 r. o ochronie tajemnicy państwowej i służbowej*. Dz. U. z 1982 r. Nr 40, poz. 271.
27. Ustawa (1999). *Ustawa z dnia 22 stycznia 1999 r. o ochronie informacji niejawnych, tekst jednolity*. Dz. U. z 2005 r. Nr 196, poz. 1631.
28. Ustawa (2010). *Ustawa z dnia 5 sierpnia 2010 r. o ochronie informacji niejawnych*. Dz. U. z 2010 r. Nr 182 poz. 1228.
29. Zalewski, S. (2014). *Ochrona informacji niejawnych. Wybrane zagadnienia bezpieczeństwa osobowego*. Płock: Oficyna Wydawnicza Szkoły Wyższej im. Pawła Włodkowica – Wydawnictwo Naukowe NOVUM.