

## **Q&A: THE NATIONAL COMMITTEE TO INVESTIGATE RUSSIAN INFLUENCE ON POLAND'S DOMESTIC SECURITY IN THE YEARS 2007-2022**

### **Why was the Committee established?**

Scale and scope of Russian influence on EU's domestic security is one of the largest challenges faced today by many EU Member States. For decades Russia used many tools to affect political decisions in Europe – aiming mainly at creating dependencies in energy generation and supply, and in access to natural resources. Through these dependencies, Russia intended to influence political decisions of the EU and its Member States – to effectively increase its ability to subjugate and conquer other countries, especially formerly being part of the Soviet Union and Soviet sphere of influence.

Corruption – in various shapes of forms – was extensively used. Many officials across Europe, including former heads of governments of the largest EU Member States, are under investigation or suspicion of exercising their public duty in a way that served Russia's interests, and then to receive benefits such as lucrative jobs in Russian state-owned companies. Some may have been bribed directly, some others – influenced in other ways, through compromising materials and blackmail.

Poland – the largest EU Member state being a neighbour of Russia – was not free from such influence. In order to grant the public the basic right to access to information about affairs of the state, scale and extent of this influence must be investigated, and remedies undertaken to limit it in the future.

### **Can the Committee restrict the right to run in parliamentary elections?**

**NO.** According to the Polish Constitution (Article 99 (3)), an individual may not be elected to the Sejm or the Senate only if sentenced to imprisonment by a final judgment for an intentional indictable offence. The Committee does not have the competence to neither to sentence to imprisonment, nor even issue judgements – only courts can do this.

The National Electoral Commission – an institution in charge of registration of committees and candidates for the elections – has already confirmed that in its statement of 31 May<sup>1</sup>.

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<sup>1</sup> [https://www.rm24.pl/raporty/raport-lex-tusk/news-jest-stanowisko-pkw-w-sprawie-komisji-ds-wplywow-rozsyjskich,nld,6812736#crp\\_state=1](https://www.rm24.pl/raporty/raport-lex-tusk/news-jest-stanowisko-pkw-w-sprawie-komisji-ds-wplywow-rozsyjskich,nld,6812736#crp_state=1)

### **What can the Committee decide?**

The Committee may issue remedies of prospective nature – subject to judicial review – in order to prevent repetition of Russian influence on Poland’s national security. These remedies may be imposed only if the Committee determines that an individual – serving as a public official between 2007-2022 – had acted under Russian influence against the interests of the Republic of Poland. The Committee may issue remedies only if there is a probability that said individual may again act in such capacity. In addition, in the case of the most significant remedy, i.e., prohibition of appointment to a public office related to management of public funds, there is additional requirement – it may be issued only if simultaneously a probability exists that they will cause a significant damage.

### **What are the types of remedies?**

The Committee may:

- (i) Nullify security clearance or forbid obtaining security clearance for a period of up to 10 years;
- (ii) Forbid appointment to a public office related to management of public funds, for a period of up to 10 years;
- (iii) Nullify firearms license or forbid obtaining it for a period of up to 10 years.

The Committee may also nullify administrative decisions issued as a result of Russian influence.

### **Are there similar remedies already existing in the law?**

**YES.** A remedy of forbidding appointment to a public office related to management of public funds for a period of up to 5 years may be imposed by the Committee on Responsibility for Misappropriation of Public Funds, based on the law on responsibility for misappropriation of public funds of 17 December 2004 (Journal of Laws of the Republic of Poland, No. 14, Item 114, as amended).

Security clearance may be nullified i.a. based on the regulations of the law on protection of classified information of 5 August 2010 (Journal of Laws of the Republic of Poland, No. 182, Item 1228, as amended).

Firearms license may be nullified i.a. on the basis of the law on firearms and munitions of 21 May 1999 (Journal of Laws of the Republic of Poland, No. 53, Item 549, as amended).

All these decisions are based on regulations in force for many years. They are also subject to judicial review – to the same extent as the remedies imposed as the Committee.

### **Do parties have legal guarantees and ability to present evidence?**

**YES.** The Code of Administrative Proceedings provides that parties subject to the proceedings can present all evidence that may be relevant to the case (Article 75 (1) of the Code) – in particular witnesses, documents, expert opinions or inspection. The parties have also right to establish an attorney (Article 32 of the Code).

The Committee is obliged to inform parties on legal and factual circumstances that may be relevant to the case (Article 9 to the Code), and to ensure that the parties may actively participate in every stage of the proceedings; prior to issuing a decision parties have the right to present their position as to collected evidence and materials and to submit demands (Article 10 of the Code). Any decision must contain legal basis, determinations made, extensive factual and legal reasoning and an instruction on the right and procedure of appeal (Article 107 of the Code).

All these guarantees, and many others, are a long-standing principles of Poland's domestic law, confirmed by decades of jurisprudence.

### **Is there a judicial review of Committee's decisions?**

**YES.** Any decision issued by the Committee may be appealed to an administrative court, and further to the Supreme Administrative Court. According to Article 50 (1) the law on proceedings before administrative courts, an appeal from any administrative decision may be lodged by any person that has a legal interest (i.e. is affected by the decision in any way), by the public prosecutor, the Ombudsman and Ombudsman for Children. This regulation applies fully to the Committee's decisions.

### **Is the judicial review limited to procedural issues, or otherwise restricted?**

**NO.** Administrative court assesses both infringements of procedural and material law. It also verifies whether the evidence was properly gathered examined by the Committee. The court is also obliged to take into account all infringements *ex officio*, even if they are not invoked by an interested party (Article 134 (1) of the law on proceedings before administrative courts). Supplementary evidence may also be presented by parties if allowed by the court, or examined *ex officio* (Article 106 (2)).

In the event of any infringements that may have impacted the outcome of the proceedings before the Committee, the court nullifies its decision fully or partially,

declares its invalidity or that it was issued with a gross violation of law (Article 145 of the law on proceedings before administrative courts).

### **Can the decisions be suspended until the final verdict of the court?**

**YES.** When the appeal is lodged, the court – or the Committee itself – at the request of applicant may decide to suspend the decision until the final judgment. The regulation of Article 61 of the law on proceedings before administrative courts concerns all administrative decisions issued by public institutions. Committee's decisions will be subject to the same procedures, well-established in Poland's national jurisprudence.

### **Will the Committee be impartial and objective?**

**YES.** The Committee will be composed of nine members elected by the Sejm (lower chamber of Parliament), out of candidates designated by all political groups. The Committee will proceed under the regulation of the newly adopted law and the Code of Administrative Proceedings – imposing strict regulations, including the principle of objective truth (the obligation to establish all facts of the case based on all available evidence – Article 7 of the Code), the principle of *in dubio pro reo* (resolving all doubts in favour of the parties – Article 7a of the Code) and the principle of proportionality (imposing remedies and taking any actions only to the necessary extent – Article 7b of the Code).

### **Will the Committee's work be transparent?**

**YES.** The main goal of the Committee is to establish facts on the scale and extent of Russian influence on Poland's national security – and to present these facts to the public, to increase general knowledge about this crucial issue. The proceedings will be carried out with full transparency, open to the public and potentially broadcasted live by all interested media. Only in cases when classified information would need to be examined, Committee's sessions may be closed to the public. Committee is also obliged to present publicly an annual report on its activities containing description of identified cases of activities under the Russian influence, information on issued administrative decisions and remedies applied therein and conclusions and recommendations for public authorities as well as other organizations and entities in the field of preventing and combating Russian influence.

### **Why not a parliamentary committee?**

The issue of Russian influence on Poland's national security remains one of the most important challenges, and its extent reaches far into various areas of functioning of the

state and private sector. The scope of the matter makes it difficult to conclude proceedings until the end of term of Sejm (November 2023) – that would effectively discontinue works of a parliamentary committee. The intention is to continue investigation until the full extent of Russian influence on Poland's national security is investigated, regardless of elections and political process. The principle of impartiality and the fact that all parliamentary groups may designate candidates to the Committee ensures that it may continue its work.