



# INSTYTUT PAMIĘCI NARODOWEJ

## **The Act on the Institute of National Remembrance**

### **The Act on the Institute of National Remembrance**

#### **The Act**

#### **on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation**

**dated 18 December 1998**

**(the consolidated text)**

Bearing in mind:

- the remembrance of the enormity of the number of victims, the losses and damages suffered by the Polish people during World War II and after it ended,
- the patriotic tradition of the struggle of the Polish people against the occupiers, the Nazism and communism,
- the actions of the citizens for the sake of the independence of the Polish State and in defence of freedom and human dignity,
- the obligation to prosecute the crimes against peace and humanity and war crimes,
- as well as the obligation of our state to compensate all the aggrieved by a state which violated human rights, as an expression of our belief that no unlawful action by the state against the citizens can be guarded as classified or left to oblivion – the following shall apply:

### **Chapter 1**

#### **General provisions**

Art. 1. The act regulates:

1) the recording, collecting, storing, processing, securing, making available and publishing of the documents of the state security authorities, produced and accumulated from July 22, 1944 until July 31, 1990, as well as the documents of the security authorities of the Third Reich and the Soviet Union relating to:

a)

- the Nazi crimes,
- the communist crimes,
- other crimes against peace, humanity or war crimes, perpetrated on persons of Polish nationality or Polish citizens of other nationalities between September 1, 1939 until July 31, 1990,

b) other politically motivated reprisals, instigated by the officers of the Polish law enforcement agencies or the judiciary or persons acting on their order which were disclosed in the contents of the rulings made on the strength of the Act, dated February 23, 1991, on considering as invalid the rulings made in the cases of persons oppressed for their activities for the cause of an independent Polish State (Journal of Laws No. 34, section 149, with later amendments),

c) the actions of the state security authorities described in art. 5;

2) the procedure for the prosecution of the crimes specified in point 1, letter a;

3) the protection of the personal data of the people referred to in the documents collected in the archive of the Institute of National Remembrance.

4) performing activities in the field of public education

Art. 2.1. As conceived of by the Act, communist crimes are actions performed by the officers of the communist state between September 17, 1939 and July 31, 1990 which consisted in applying reprisals or other forms of violating human

rights in relation to individuals or groups of people or which as such constituted crimes according to the Polish penal act in force at the time of their perpetration. As communist crimes are also regarded the actions of those officers in the period in question in the preceding sentence which bear the hallmarks of the unlawful acts defined in art. 187, 193 or 194 of the ordinance of the President of the Republic of Poland, dated July 11, 1932 – the Penal Code or art. 265 § 1, art. 266 § 1, 2 or 4 or art. 267 of the Act dated April 19, 1969 – the Penal Code, performed in relation to the documents within the understanding of art. 3, section 1 and 3 of the Act dated October 18, 2006 on the disclosure of information relating to the documents of the state security authorities from the period between 1944 and 1990 and the contents of those documents (Journal of Laws No. 218, section 1592 and No. 249, section 1832 and of 2007 No. 25, section 162) to the detriment of the persons referred to in the documents.

2. As conceived of by the Act, the communist state officer is a public functionary, as well as a person who was granted equal protection to that of a public functionary and in particular, a public functionary and a person who performed executive functions within the statutory body of the communist parties.

Art. 3. As crimes against humanity are especially considered the crimes of genocide as understood by the Convention on the Prevention and Punishment of the Crime of Genocide, adopted on December 9, 1948 (Journal of Laws of 1952 No. 2, section 9 and 10 and No. 31, section 213 and of 1998 No. 33, section 177), as well as other serious persecutions based on the ethnicity of the people and their political, social, racial or religious affiliations, if they were performed by public functionaries or either inspired or tolerated by them.

Art. 4.1. The crimes mentioned in art. 1, point 1, letter a which, according to the international law, constitute crimes against peace, humanity or war crimes shall not be subject to a limitation period.

1a. The limitation period for the communist crimes, as conceived of in art. 2, which are not war crimes or crimes against humanity commences as of August 1, 1990. The penalty of those crimes expires after 40 years, if the act is the crime of homicide, and after 30 years, if the act constitutes a different communist crime. The provision of art. 4 § 1 of the Penal Code shall not be applied.

2. The crimes mentioned in art. 1, point 1, letter a, committed against other persons than Polish citizens are within the cognizance of the organs established by the Act, provided they were committed on the territory of the Polish State.

3. In relation to the perpetrators of war crimes the provisions of the Acts and Decrees issued prior to December 7, 1989 which stipulate amnesty or abolition shall not be applied.

Art. 5.1. Within the understanding of the act the state security authorities are:

1) the Department of Public Security of the Polish Committee of National Liberation;

2) the Ministry of Public Security;

3) the Committee for Public Security;

4) the organizational units subordinate to the organs mentioned in points 1-3, in particular the units of the Civil Militia (Milicja Obywatelska) in the period until December 14, 1954;

5) the central institutions of the Security Service of the Ministry of Internal Affairs and its subordinate local units in the provincial, district and equivalent Civil Militia departments as well as in the provincial, district and equivalent internal affairs offices;

6) the Academy of Internal Affairs;

7) the Reconnaissance Border Defence Troops;

8) the Internal Service Chief Directorate of the military units in the Ministry of Internal Affairs and its subordinate units;

9) the Military Information;

10) the Internal Military Service;

11) the Directorate of the Second Section of General Staff of the Polish People's Army;

12) other services of the Armed Forces which performed operational and reconnaissance or investigative tasks, including different arms and military districts;

13) the Main Office for Control of the Press, Publications and Public Performances, along with the provincial and municipal offices for control of the press, publications and public performances, as well as the Main Office for Control of Publications and Public Performances together with the district offices;

14) the Office for Religions and the local organs of state administration specifically competent in the matter of religions at the provincial level.

2. According to the Act, the state security authorities also include the civilian and military organs and institutions of other states which had similar tasks to those of the organs mentioned in section 1.

3. According to the Act the Security Service Units those Ministry of Internal Affairs units which, by virtue of the law, were subject to dissolution at the moment of the creation of the Office for State Protection, as well as those units which were their predecessors.

Art. 6. (repealed).

Art. 7. According to the Act, the documents are:

- 1) any data carriers, regardless of the form of information storage, in particular: files, records, registers, computer files, letters, maps, plans, films and other image carriers, sound carriers and any other records, as well as copies, counterparts and other duplicates of those data carriers;
- 2) indispensable aids for the analysis of the information, in particular programs used to automatically process data.

## **Chapter 2**

### **The Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation and its Organs**

Art. 8. 1. In order to fulfil the tasks defined in art. 1 the Institute of National Remembrance- Commission for the Prosecution of Crimes against the Polish Nation, hereinafter called the "Institute of Remembrance" shall be established.

2. The Institute of Remembrance is financed by the state budget, in which it has a separate share.

3. The organization of the Institute of Remembrance, to the extent in which it is not regulated by the Act, is defined by the statute adopted by the Council of the Institute of Remembrance at the application of the President of the Institute of Remembrance.

Art. 9. 1. The Institute of Remembrance shall be directed by the President of the Institute of Remembrance.

2. The President of the Institute of Remembrance shall be independent in his functions from the organs of state authority.

Art. 10. 1. The President of the Institute of Remembrance shall be appointed and dismissed by the lower chamber (Sejm) of the Parliament of the Republic of Poland, at the agreement of the Senate and at the application of the Council of the Institute of Remembrance which shall present a candidate who is not its member.

2. The tenure of the President of the Institute of Remembrance shall last 5 years, beginning from the date of his oath. After the termination of his tenure he shall perform his responsibilities until the assumption of the post by the new President of the Institute of Remembrance.

3. No sooner than 6 months and no later than 3 months before the termination of the tenure of the President of the Institute of Remembrance the Chairman of the Council of the Institute of Remembrance shall announce a public competition for this post, according to the provisions and course defined by the Council of the Institute of Remembrance. Should the post of the President of the Institute of Remembrance be vacated for any other reason, the time limit for the presentation of candidates in the competition for this post shall be 30 days from date of the announcement of the competition. The interviews with the candidates for the post of the President of the Institute of Remembrance shall be public.

4. One and the same person cannot be the President of the Institute of Remembrance for more than two terms.

Art. 11. 1. The post of the President of the Institute of Remembrance can be held by a Polish citizen who has a strong moral character and necessary knowledge for the tasks of the Institute of Remembrance.

2. The post of the President of the Institute of Remembrance cannot be held by a person who served, worked or collaborated with the state security organs mentioned in art. 5, or by a judge who, in his verdicts, offended the dignity of his office, violating the independence of the judiciary.

2a. The post of the President of the Institute of Remembrance cannot also be held by a person about whom the archives which are subject to be transferred to the Institute of Remembrance or other state archives contain information implying the premises defined in section 2.

2b. The post of the President of the Institute of Remembrance cannot also be held by a person whose tasks connected with the access to state secrets or encompassed by the state secret make it impossible to present information on his or her course of service, work or collaboration.

3. The President of the Institute of Remembrance cannot belong to any political party, trade union or carry on political activity which is incompatible with the dignity of his or her office.

4. The President of the Institute of Remembrance cannot perform any other job, apart from being a professor of an institution of higher education.

5. The post of the President of the Institute of Remembrance cannot be combined with the mandate of a member of Parliament or senator.

6. The conditions referred to in sections 1, 2, 3 and 5 should also be fulfilled by public prosecutors and Institute of Remembrance employees, as well as the members of the Council of the Institute of Remembrance.

Art. 12. Before assuming his responsibilities, the President of the Institute of Remembrance shall take an oath before the Sejm of the Republic of Poland to the following effect:

" I solemnly swear to serve faithfully the Polish Nation on the post of the President of the Institute of National

Remembrance with which I am entrusted, to protect the law, conscientiously perform the responsibilities of my office and apply the principles of dignity and honesty in my conduct". The oath can be sworn by adding the sentence "So help me God".

Art. 13. The tenure of the President of the Institute of Remembrance shall be terminated as a result of:

- 1) death;
- 2) resignation;
- 3) dismissal
- 3) being sentenced with a final and binding sentence for a crime;

The Council of the Institute of Remembrance applies for a dismissal of the President of the Institute of Remembrance if:

- 1) Due to illness, disability or decrease of strength he becomes unable to fulfil tasks of the President of the Institute of Remembrance
- 2) He does not fulfil the tasks imposed by the Act or acts in disservice of the Institute.
- 3) The annual report on the activities of the Institute of Remembrance for a given calendar year has not been accepted.

Art. 14. The President of the Institute of Remembrance cannot, without the prior agreement of the Sejm of the Republic of Poland, be prosecuted or imprisoned. The President of the Institute of Remembrance cannot be detained or arrested, unless he is detained in the act of committing a crime and his detention is indispensable to ensure the correct course of the proceedings. The Speaker of the Sejm shall be immediately notified about the detention and can order an instant dismissal of the detainee.

Art. 15. 1. The Council of the Institute of Remembrance shall be created within the Institute of Remembrance. A member of the Council of the Institute of Remembrance must be a Polish citizen who fulfils provisions of Art. 11 section 1-3 and 5 and:

- 1) Has full public law
- 2) Has not been sentenced with a valid sentence for an intentional criminal offence
- 3) Has an academic title or university degree in humanities or law.

2. Councils of universities' organisational units have rights to grant humanities Ph.D. university degree in history.

Scientific councils of the Institute of History of the Polish Academy of Sciences, the Institute of The History of Science of the Polish Academy of Sciences and Institute of International Relations of the Polish Academy of Sciences select one candidate each, who distinguishes himself in knowledge of the Polish history of the 20th century, to the assembly of electors, which presents, no later than in 2 months before the end of IPN Council term :

- 1) 10 candidates for members of the Institute Council to Sejm
- 2) 4 candidates of the Council of the Institute to Senate

3. National Council of Judiciary presents to the President of the Republic of Poland 2 candidates for members of the Council of the Institute no later than in 2 months before the end of Institute's Council term.

4. National Council of Public Prosecution presents to the President of the Republic of Poland 2 candidates for members of the Council of the Institute no later than in 2 months before the end of Institute's Council term

5. Provisions of sections 2-4 are valid when Sejm, Senate and the President of the Republic of Poland do not appoint the complete Council of the Institute from among the candidates presented in the manner referred to in sections 2-4.

6. The Council of the Institute is appointed for a 6-year-tenure.

7. The term of the Council of the Institute begins on the day of the first meeting of the Council.

8. First meeting of the Council is summoned by the President of the Institute.

9. Members of the Council of the Institute are not appointed for more than 2 terms.

10. The Council of the Institute consists of 9 members including:

- 1) 5 members appointed by Sejm from among candidates presented in the manner referred to in section 2 point 1.
- 2) 2 members appointed by Senate from among candidates presented in the manner referred to in section 2 point 2.
- 3) 1 member appointed by the President of the Republic of Poland from among candidates presented in the manner referred to in section 3.
- 4) 1 member appointed by the President of the Republic of Poland from among candidates presented in the manner referred to in section 4.

11. If subjects referred to in sections 2-4, do not present to Sejm, Senate or the President of the Republic of Poland required number of candidates for Council of the Institute to in mandatory time, Sejm, Senate and the President of the Republic of Poland appoint members of the Council of the Institute.

12. Appointing new members of the Council of the Institute should not take place later than in 2 days until end of Institute's Council term.

13. Membership in the Council of the Institute shall be terminated as a result of:

- 1) death;

2) resignation;

3) being sentenced with a final and binding sentence for a crime;

4) being dismissed by Sejm, Senate or the President of the Republic of Poland at the request of the Council of the Institute.

14. The Council of the Institute proposes with 2/3 majority of votes for a dismissal of a member of the Council if:

1) Due to illness, disability or decrease of strength a member becomes unable to fulfil tasks of the member of Council of the Institute

2) A member does not fulfil the tasks of the member of Council of the Institute defined by the Act or acts in disservice of the Institute.

15. In the event of termination of the membership before the end of Institute's Council term, appropriate authority appoints a new member, for a period until the end of Institute's Council term. Provisions of sections 2-4 are not valid here.

16. The Council of the Institute appoints from among its members the Chairman of the Council and no more than 3 Deputy Chairmen for a year-long term.

17. Costs of the meetings of the assembly of electors are covered from the budget of the Institute.

18. The Prime Minister will define by a decree the amount of allowance to which members of the Council of the Institute are entitled due to the performed tasks, taking into consideration their scope. The allowance cannot be higher than 4 minimal remunerations.

19. The Prime Minister will define by a decree the course and manner of proposing candidates to the Council of the Institute, taking into consideration efficient qualification process.

20. The Prime Minister will define by a decree :

1) The course of selecting candidates to the assembly of electors by the entitled authorities

2) Conditions and manner of summoning and organising meetings of the assembly of electors – taking into consideration the necessity of choosing the candidates to the Council of the Institute efficiently.

21. Minister of education will announce in the Official Gazette of the Government of the Republic of Poland "Monitor Polski", the list of universities and institutes, referred to in section 2, entitled to choosing representatives of the assembly of electors.

Art. 16. 1. The President of the Institute of Remembrance shall perform his tasks with the aid of the organisational units of the Institute of Remembrance referred to in art. 18.

2. The President of the Institute of Remembrance can appoint no more than three deputies.

Art. 17. 1. In order to perform the tasks of the Institute of Remembrance in places which are seats of appellate courts, there shall be created branch offices, hereinafter called "branches", of the Institute of Remembrance, while in other cities there can be created delegation of the Institute of Remembrance, hereinafter called "delegations".

2. A branch office of the Institute of Remembrance shall be headed by a director of the office, whereas a delegation shall be managed by a head of the delegation. A branch office director and a delegation head shall be appointed and dismissed by the President of the Institute of Remembrance.

Art. 18. 1. Within the Institute of Remembrance there shall be created:

1) The Chief Commission for the Prosecution of Crimes against the Polish Nation, hereinafter called "the Chief Commission";

2) The Office for the Preservation and Dissemination of the Archival Records;

3) The Public Education Office;

4) The Vetting Office.

2. Within the branch offices there shall be created:

1) branch commissions for the prosecution of crimes against the Polish nation, hereinafter called "the departmental commissions";

2) branch offices for the preservation and dissemination of the archival records;

3) branch public education offices;

4) branch vetting offices.

3. Within delegations there can be created departments for the preservation and dissemination of the archival records, public education departments and prosecution departments.

Art. 19. 1. The prosecutors in the Chief Commission and in the departments shall be appointed and dismissed by the Public Prosecutor General at the application of the President of the Institute of Remembrance.

2. The organisational units mentioned in art. 18, section 1, point 2 and 3 shall be headed by directors appointed and dismissed by the President of the Institute of Remembrance.

3. The organisational units mentioned in art. 18, section 2 point 2 and 3, as well as section 3 shall be managed by heads

appointed and dismissed by the President of the Institute of Remembrance.

4. The Chief Commission shall be headed by the Director of the Chief Commission. The director of the Chief Commission shall be appointed, from among the prosecutors of the Chief Commission, and dismissed by the Chairman of the Council of Ministers at the application of the Public Prosecutor General made in agreement with the President of the Institute of Remembrance. The Director of the Chief Commission shall be one of the deputies to the Public Prosecutor General.

5. A departmental commission shall be managed by the head of the departmental commission. The head of the departmental commission shall be appointed, from among the prosecutors mentioned in section 1, and dismissed by the Public Prosecutor General at the application of the President of the Institute of Remembrance.

5a. The Director of the Chief Commission can entrust a prosecutor of a departmental commission with the performance of the responsibilities of the head of the departmental commission for the period of not more than 6 months.

6. An employee of the Institute of Remembrance cannot, without the permission of the President of the Institute of Remembrance, assume another job.

7. The prosecutors of the Vetting Office and the prosecutors of the departmental vetting offices shall be appointed and dismissed by the Public Prosecutor General at the application of the President of the Institute of Remembrance.

8. A departmental vetting office shall be managed by the head of the departmental vetting office. The head of the departmental vetting office shall be appointed, from among the prosecutors mentioned in section 7, and dismissed by the Public Prosecutor General at the application of the President of the Institute of Remembrance.

The Director of the Vetting Office can entrust the prosecutor of a departmental vetting office with the performance of the responsibilities of the head of the departmental vetting office for a period of not more than 6 months.

10. The Vetting Office shall be headed by the director of the Vetting Office, appointed from among the prosecutors of the Vetting Office and dismissed by the Chairman of the Council of Ministers at the application of the Public Prosecutor General made in agreement with the President of the Institute of Remembrance.

11. The tenure of the Director of the Vetting Office shall last 3 years, beginning on the date of appointment; after the lapse of his tenure the Director of the Vetting Office shall perform his responsibilities until a new Director of the Vetting Office is appointed.

12. One and the same person can be the Director of the Vetting Office not longer than for two successive terms.

13. The tenure of the Vetting Office Director shall be terminated with his death or dismissal.

14. The Vetting Office Director shall be dismissed, if:

1) he has renounced his post;

2) a legally valid court ruling states that his vetting declaration is false;

3) there is a lasting impediment to the performance of his official responsibilities;

4) he has been sentenced for an indictable crime;

5) he has been sentenced to prison without a conditional suspension of the punishment.

Art. 20. The Institute of Remembrance employees, also after the termination of their employment contracts, are bound to keep in secret any information relating to the activities of the Institute of Remembrance which was obtained on account of their employment in the Institute of Remembrance, except for that obtained during the course of academic research.

Art. 21. The President of the Institute of Remembrance and the members of the Council of the Institute of Remembrance are obliged, also after the lapse of their tenure or termination of membership, to keep in secret any information to which they had access on account of the performed functions. This shall not concern commonly known facts.

Art. 22. 1. The President of the Institute of Remembrance can, in special cases, agree to the disclosure of information which constitutes state or official secret and to give access to documents or materials protected as state secrets to a person or institution, if the keeping of the secret made it impossible to perform the statutory tasks of the Institute of Remembrance.

2. As regards the documents transferred to the archives of the Institute of Remembrance, the President of the Institute of Remembrance shall be accorded the rights defined in art. 25, section 6 of the Act dated January 22th, 1999 on the protection of secret information (Journal of Laws of 2005 No. 196, section 1631, with later amendments).

Art. 23. 1. The President of the Institute of Remembrance shall periodically inform the Council of the Institute of Remembrance about important matters connected with the activities of the Institute of Remembrance.

2. Apart from other tasks defined in the Act, the Council of the Institute of Remembrance shall particularly deal with the following:

1) the introduction into the archives of the Institute of Remembrance of documents relating to the cases referred to in art. 1 and the assessment of their completeness;

- 2) the setting of rules for the recording, storing, compiling, securing, disseminating and publishing of the documents;
  - 3) the setting of priorities in the matter of the access to the documents;
  - 4) the assessment of the prosecution policy implemented by the Institute of Remembrance in relation to the crimes referred to in art. 1, point 1, letter a;
  - 5) the assessment of the activities of the Vetting Office;
  - 6) the arrangement of research programmes in relation to the organisation of the tasks of the state security organs, as well as informing and educating the public;
  - 7) it shall express, by virtue of art. 36 section 9, its opinion on the legitimacy of its refusal to make available the documents collected by the Institute of Remembrance.
  - 8) formulating recommendations regarding fundamental directions of work of the Institute concerning scientific research, education, access to documents, persecuting crimes and vetting procedures.
3. The Council of the Institute of Remembrance shall endorse the annual report referred to in art. 24, section 1.
4. The Council of the Institute of Remembrance shall make its resolutions with a majority of votes in the presence of at least half the statutory number of the Council members.

Art. 24. 1. Once a year the president of the Institute of remembrance shall make a report to the Sejm and Senate on the activities of the Institute of Remembrance.

2. The report referred to in section 1, as regards its part relating to state security or defence, can be made classified.

3. The report of the President of the Institute of Remembrance shall be made public, except for the part referred to in section 2.

4. Once a year, by the agency of the Speaker of the Sejm, the President of the Institute of Remembrance shall make a report for the exclusive information of the members of the Sejm Commission for Special Services, on the issues defined in art. 38.

Art. 24a. 1. The President of the Institute presents to the Council of the Institute the report on the activities of the Institute for a given calendar year no later than until 31 March of the next year.

2. The Council of the Institute accepts the report on the activities of the Institute for a given calendar year with an absolute majority of votes.

3. With regards to the report referred to in section 1, provisions of art. 24 section 2 and 3 are valid respectively.

### **Chapter 3**

#### **Collection of Documents by the Institute of Remembrance**

Art. 25. 1. Not later than within 60 days as of the date of the establishment of the Institute of Remembrance the organs mentioned below shall be obliged to prepare and transfer to the archives of the Institute of Remembrance documents, data collections, registers and files created and collected by state security organs, prison institutions, courts and public prosecutor offices as well as the security organs of the Third Reich and the Soviet Union. This obligation shall rest with:

- 1) the Minister of Internal Affairs and Administration and the Head of the Office for State Protection - as regards the documents, data collections, registers and files, as well as the files of the officials, created or collected until May 6th, 1990;
- 2) the Minister of Defence - as regards the documents, data collections, registers, files of the military security organs, as well as the files of the functionaries of the services, created or collected until December 31st, 1990;
- 3) the Minister of Justice - as regards the documents, data collections, registers, files created or collected by the prison institutions until December 31st, 1956, the documents, data collections, registers and files created or collected by the security department of the Central Directorate of Prison Institutions and its subordinate units until December 31, 1989, as well as the prison files of people oppressed or political reasons and placed in prison institutions, detention facilities and isolation camps;
- 4) the heads of courts of law and military courts - as regards the case files of persons oppressed for political reasons;
- 5) the public prosecutors managing the organizational units of general and military prosecutor's offices - as regards the files, including the reference files, of the cases referred to in point 4;
- 6) the directors: of the Archives of New Files and other state archives - as regards the files of the former Polish Workers' Party and of the former Polish United Workers' Party relating to the state security organs, as well as the files of the security organs of the occupying states;
- 7) the directors: of the Archives of New Files and other state archives - as regards the documents, data collections, registers and files referred to in points 1-5, and stored in those archives; their transfer to the Institute of Remembrance shall take place on the basis of a loan for use.

2. The transfer of the files referred to in section 1, point 6 shall consist in providing a copy.

3. The obligation defined in section 1, points 1-5 also concerns the copies of the documents, data collections and files, regardless of the date of their creation.

4. At any time the President of the Institute can demand that:

- 1) the Minister competent in internal affairs,
- 2) the Minister of National Defence,
- 3) the Minister of Justice,
- 4) the head of a court of law or a military court,
- 5) the prosecutor managing a general or a military prosecutor's office organisational unit,
- 6) the director the Archives of New Files or any other state archives,
- 7) the heads of the Internal Security Agency, the Foreign Intelligence Agency, the Military Counterintelligence Service and the Military Intelligence Service,

as well as other institutions, hand over the documents which have not been transferred.

5. For official purposes the Minister of Internal Affairs and Administration, the Head of the Office of State Protection, as well as the Minister of National Defence can make copies of the files of the functionaries who remain in service which were created at that time referred to respectively in section 1, point 1 or 2.

6. For the needs of the organs defined in section 1, points 1-7, the President of the Institute of Remembrance shall determine the dates for the transfer of the documents, data collections, registers and files referred to in this regulation.

Art. 26. 1. The Archives of the Institute of Remembrance shall receive the documents created in the course of the proceedings carried on by courts in the cases referred to in the Act dated October 18, 2006 on the disclosure of information about the documents of the state security organs from the years 1944-1990, as well as of the contents of those documents, as of the moment when the proceedings in a given case have been terminated in a legally binding way, without prejudice of section 2.

2. The documents created in the course of the proceedings carried on by courts in the cases referred to in art. 17 of the Act mentioned in section 1 shall be transferred after the lapse of the time limit defined for the application to annul the case and, if the application has been filed - after its investigation. As soon as the proceedings in a given case have been terminated in a legally binding way, the copies of the documents shall be transferred.

Art. 27. 1. The President of the Institute of Remembrance, after notifying the proper organ of government administration, local government or professional association, can obtain the right to inspect the documents, if there is a founded suspicion that they contain information pertaining to the tasks of the Institute of Remembrance.

2. Any person in possession of the documents referred to in art. 25 is obliged immediately to notify the President of the Institute of Remembrance about this.

3. Any organ of government administration, local government or professional association is obliged immediately to hand over to the President of the Institute of Remembrance, on his demand, any documents that they possess which are referred to in art. 25. The obligation also concerns the transfer of copies.

4. The President of the Institute of Remembrance can also demand the issuance of any other documentation than that mentioned in art. 25, regardless of the time of its creation or collection, if it is indispensable to fulfil the tasks of the Institute of Remembrance defined in the Act.

5. If the documents are necessary for the organ referred to in section 3, for the fulfilment of its statutory tasks, it shall suffice that only their copies be handed over to the President of the Institute of Remembrance.

Art. 28. 1. Any person who, without legal authorisation, is in possession of documents which contain information pertaining to the tasks of the Institute of Remembrance is obliged to immediately transfer them to the President of the Institute of Remembrance.

2. The owner or any other person with a legal title to the ownership of the documents referred to in section 1 is obliged to make them available to the President of the Institute of Remembrance, on his demand, for the purpose of preparing a copy.

3. The President of the Institute of Remembrance can refer to any foreign persons or institutions for help in obtaining access to the documents.

Art. 29. As regards its archiving tasks, the Institute of Remembrance collects, records, stores, prepares, secures and makes available the documents describing the crimes and the documents which depict the facts and circumstances relating to the fate of the Polish Nation in the years 1939-1990 and provide information on the losses and damage. On their basis the Institute of Remembrance issues certified copies, transcripts, extracts and reproductions of the stored documents.

## Chapter 4

### Granting Access to the Documents by the Institute of Remembrance



Art. 29a. 1. The President of the Institute of Remembrance, at a application, shall inform within 14 days in the form of a certificate whether the personal data of the applicant are identical with the personal data contained in the catalogue of the functionaries, collaborators, candidates for collaborators of the state security organs referred to in art. 5 or of other persons, rendered available in the Institute of Remembrance as of November 26th, 2004.

2. (repealed).

3. At the request of the applicant the contents of the certificate referred to in section 1 shall be published in the Public Information Bulletin of the Institute of Remembrance.

Art. 30. 1. Any person shall have the right to application the Institute of Remembrance to be granted the permission to inspect the copies of documents which concern him or her.

2. The Institute of Remembrance shall grant access of the documents referred to in section 1 which concern the applicant, or their copies if the material state of the document does not allow their access or if the access if requested by several persons at the same time or when the Institute possesses only copies of the documents, provided:

1) The Institute of Remembrance grants access of the documents referred to in section 1, which concern the applicant and prepared by the applicant or with his cooperation within his work or service in the security authorities or within his work as a secret informer or assistant in compiling operational information.

2) (expired).

3. (repealed).

4. The application referred to in section 1 should contain:

1) the name and surname, as well as the address of the applicant;

2) the type and number of his identity document;

3) the date of the issuance of the identity document and the name of the organ which issued it;

4) any data facilitating the finding of the documents.

5. Should any documents concerning the applicant be later found in the archives of the Institute of Remembrance, the applicant should be informed thereof and instructed about the possibility of making another application referred to in section 1.

Art. 31. 1. Dissemination by the institute of Remembrance copies of documents referred to in art. 30 section 2 point 1 is performed in a course of administrative decision.

2. Decision referred to in section 1 can be appealed to the President of the Institute.

Art. 32. 1. After investigating the appeal referred to in art. 31, section 2, the President of the Institute of Remembrance shall make a decision in which:

1) the decision referred to in art. 31, section 1 shall be maintained in the force of law;

2) the decision referred to in art. 31, section 1 shall be reversed and the case transferred to be investigated again by the organ of first instance.

2. The applicant can complain to the administrative court about the decision referred to in section 1, point 1 within the period defined in art. 53 of the Act of August 30, 2002 - the Law of the Administrative Court Proceedings (Journal of Laws No. 153, section 1270, with later amendments).

3. The administrative court shall investigate the complaint at a closed session.

4. The provision of art. 106 § 2 of the Act dated August 30, 2002 - the Law of the Administrative Court Proceedings shall not be applied.

5. A sentence passed at a closed session shall be justified only, if the complaint is granted. A certified copy of the sentence with the justification shall be handed over to the President of the Institute of Remembrance. The complainant shall be served with a certified copy of the sentence.

6. After passing the sentence the administrative court shall immediately return the case files to the Institute of Remembrance.

7. In the case of an annulment complaint the sections 4-6 shall be applied respectively.

Art. 33. 1. (repealed)

2. Any person who has been granted permission to inspect documents referred to in art. 30, has the right - according to the principles and to the extent defined in the Act - to obtain copies of those documents, the right to be returned the objects which are in the archives of the Institute of Remembrance which at the moment of being lost constituted his or her property or were in his or her possession.

3. Documents can be accessed in the headquarters of the branch office appropriate in terms of applicant's place of residence or any other indicated branch office in a period of 4 months from the date of submitting the application, referred to in art. 30, section 1. Provisions of art. 34 section 4 are valid respectively.

4. (repealed)

5. Receiving copies of documents is free of charge, with the exception of section 6.

6. For preparing and issuing reproductions of documents for purposes referred to in art. 36 section 1 point 1,2 and 3 a fee will be taken, which constitutes income of the Institute of Remembrance

7. The Prime minister will define by a decree the sort and scope of reproduction services, which are subject to a fee, maximum amounts of fees and the manner of their assessing and collecting, taking into consideration the need of fulfil scientific and publishing ends. The amount of fees cannot exceed additional financial costs regarding reproduction services bore by the Institute of Remembrance.

Art. 34. 1. The issuance of the document copies shall take place at a written application of the person referred to in art. 33, section 2.

2. On the demand of the applicant the issued copies of documents should be authenticated.

3. The issuance of the copies of the documents shall take place at the branch office of the Institute of Remembrance proper with regard to the domicile of the applicant, unless he indicated another branch office within 30 days as of the date of filing the application referred to in section 1.

4. The applicant should be notified in writing about the time of the issuance of the copies of the documents at least 7 days before that time. The issuance of the copies of the documents should be recorded in a report signed by the applicant and an authorized employee of the Institute of Remembrance.

5. At a written application of the person referred to in art. 33, section 2 the Institute of Remembrance shall issue the objects which are in its archives which at the moment of being lost constituted his or her property or were in his or her possession.

6. Before issuing the objects the Institute of Remembrance may prepare and keep their copies; this fact should be reported to the applicant.

7. To the extent defined in section 5 the provisions of sections 3 and 4 shall be applied respectively.

Art. 35. 1. At a written application of the person referred to in art. 33, section 2, that person shall be given the names and further data which identify the persons who passed information about him or her to the state security organs, if they can be unequivocally determined on the basis of the documents of a given state security organ and to the extent in which the documents rendered available for inspection on the basis of the application referred to in art. 33, section 1 contain the nicknames or surnames of those persons.

2. The provision of section 1 shall be applied accordingly, if the documents rendered available for inspection on the basis of the application referred to in art. 33, section 1 contain the names of the employees and functionaries who collected or assessed information about the applicant or managed the persons who passed this information to the state security organs.

3. It shall be refused to communicate the names or other data identifying the persons who only provided information about common crimes.

4. The refusal to render available the data identifying the persons referred to in sections 1 and 2 can be appealed against with the President of the Institute of Remembrance.

5. To the extent defined in sections 1 and 2 the provisions of art. 34, section 3 and 4 shall be applied accordingly.

Art. 35a. 1. The applications referred to in art. 30, section 1; art. 33, section 1 and art. 34, sections 1 and 5 shall be filed personally at the office of the Institute of Remembrance, its branch offices and delegations or by mail, if the signature of the applicant has been authenticated by a notary public.

2. A person with a permanent domicile abroad can file an application personally at a Polish consulate, the applicant's signature being authenticated by the consul. The application can also be filed by mail, if the applicant's signature has been authenticated by a notary public or other person authorised to authenticate signatures in accordance with the law of the country in which this action is to take place.

3. After filing his request, the applicant can assign an attorney to execute his rights defined in the Act.

4. The rights defined in art. 30-35 and 35b can be executed by the closest relative to the deceased as conceived of in art. 115 § 11 of the Penal Code.

5. If the rights defined in art. 30-35 and 35b are executed by the closest relative referred to in section 4, the adequate application form should bear the name and surname of the deceased whose rights it concerns.

Art. 35b. 1. Any person shall have the right to incorporate in the set of documents relating to him or her his own supplements, corrections, updates, explanations and documents or its copies. The data already contained in the documents shall not be changed.

2. The supplements, corrections, updates, explanations and documents or its copies shall be incorporated in the set of documents and marked so that they can be readily distinguished from the documents collected by the Institute of Remembrance according to the procedure of art. 25.

Art. 35c. 1. Any person shall have the right to file an application with the Institute of Remembrance to be granted the

right to inspect the personal documents relating to an employee or functionary of a state security organ.

2. The application referred to in section 1 should contain:

- 1) the name and surname, as well as the domicile of the applicant;
- 2) the type and number of his identity document;
- 3) the date of the issuance of the identity document and the name of the organ which issued it;
- 4) any data facilitating the finding of the documents; in particular, the name and surname, as well as the information about the place of work or activity of the employee or functionary of the state security organ to whom the documents relate.

3. Functionaries and employees of state security organs can obtain, at their own application, copies of the personal documents concerning them.

4. Should any personal documents be later found in the archives of the Institute of Remembrance which relate to the employee or functionary of the state security organ and in which the applicant was interested, he should be informed thereof and instructed about the possibility to file again the application referred to in section 1.

Art. 36. 1. The documents collected by the Institute of Remembrance shall be made available in order to:

- 1) perform the statutory tasks;
- 2) conduct academic research;
- 3) publish press materials, within the understanding of the provisions of the Act dated January 26, 1984 - the Press Act (the Journal of Laws No. 5, section 24, with later amendments), with the authorisation of the editorial staff or the publisher.

2. The documents referred to in section 1 shall be rendered available at a written application, referred to the director of the department of the Institute of Remembrance proper with regard to the domicile or office of the applicant.

3. The application mentioned in section 2 should contain:

- 1) the name and surname or the name and domicile or office of the applicant;
- 2) the type and number of the identity document of the person who is to be granted access;
- 3) the date of the issuance of the identity document belonging to the person who is to be granted access and the name of the organ which issued it;
- 4) any data facilitating the finding of the documents.

4. The application to be granted access to the documents with the purpose mentioned:

- 1) in section 1, point 1 - should also contain the legal grounds concerning the performance of the tasks referred to in section 1, point 1;
- 2) in section 1, point 2 - should also contain:
  - a) an indication of the topic of the conducted academic research,
  - b) a recommendation of an academic competent to conduct research in the humanities, sociological, economical or legal areas - in the case of persons who are not such academics;
- 3) in section 1, point 3 - should also contain:
  - a) an indication of the topic of the press material,
  - b) an enclosed authorisation from the editorial staff or publisher to file such a application.

5. The entities who have presented the application and were granted access to the documents, shall bear the legal responsibility for the way they are used, which shall be subject to a written notification.

6. The director of a department of the Institute of Remembrance, by virtue of an administrative decision, shall refuse access to the documents referred to in section 1, if the application does not comply with the conditions defined in section 1-4 or there are premises referred to in art. 30, section 2, point 1; art. 37 or art. 39.

7. The decision mentioned in section 6 should contain a factual and legal justification. The factual justification can be omitted or limited to the extent in which rendering the information available to the applicant makes it impossible to implement the Act dated October 18, 2006 on the disclosure of information about the documents of the state security organs from the years 1944-1990 and of the contents of those documents (Journal of Laws of 2007 No 63, section 425, No. 83, section 561, No. 85, section 571 and No. 115, section 789).

8. The decision referred to in section 6 can be appealed against with the President of the Institute of Remembrance.

9. As a result of investigating the appeal referred to in section 8, the President of the Institute of Remembrance, having consulted the Council of the Institute of Remembrance, shall make a decision with which:

- 1) he shall maintain the decision mentioned in section 6;
- 2) he shall reverse the decision referred to in section 6 and refer the case to be investigated again by the organ of first instance.

10. In the case of the decision of the President of the Institute of Remembrance mentioned in section 9 the provision of section 7 shall be applied.

11. The applicant shall have the right to complain to an administrative court about the decision referred to in section 9,

point 1, within a time limit defined in art. 53 of the Act dated August 30, 2002 – the Law of Administrative Court Proceedings (Journal of Laws No. 153, section 1270, with later amendments).

12. The administrative court shall investigate the complaint at a closed session.

13. After the sentence has become legally binding, the administrative court shall immediately return the case files to the Institute of Remembrance.

14. In the case of an annulment complaint the provision of section 12 shall be applied accordingly.

Art. 37. 1. The person who, by virtue of art. 33, has been granted the right to inspect documents relating to him or her, while there are no existing documents concerning him or her which are referred to in art. 31, section 1, may stipulate that the personal data concerning him or her collected in a secret way in the course of operational and reconnaissance activities of state security organs shall not be made available for the purposes mentioned in art. 36, section 1, points 2 and 3 for a specified period of time, though no longer than for 50 years from the date of their creation.

2. The person who, by virtue of art. 33, has been granted the right to inspect documents relating to him or her can stipulate that the information disclosing his or her ethnic or racial origin, religious beliefs, denomination or data on his or her health state and sexual life, as well as disclosing her material status, especially the real estate and personal property which constitute goods of cultural value within the understanding of the regulations protecting those goods of cultural value shall not be made available.

3. The President of the Institute of Remembrance shall inform about the right to stipulate mentioned in sections 1 and 2.

4. The person who, by virtue of art. 33, has been granted the right to inspect documents concerning him or her may agree to disclose his or her personal data, defined in section 1, to particular public authority organs, other institutions, organisations and persons, as well as to make them generally available.

5. The personal data, defined in section 1, can be made available for the purposes referred to in art. 36, section 1, points 2 and 3, if:

1) the person to whom these data refer, or in the event of death, his or her closest person has agreed to it;

2) they relate to a public appearance of the person they concern, his or her public or political activity or constitute personal data required by the act in connection with the performance of a public function.

6. The purposes mentioned in art. 36, section 1, points 2 and 3 can be fulfilled also after making anonymous the personal data and information, referred to in sections 1 and 2, in the copies of the documents.

7. The right to stipulate referred to in sections 1 and 2, as well as the right to express the agreement to disclose one's personal data, defined in section 1, to particular public authority organs, other institutions, organisations and persons shall not remain in force in relation to the documents referred to in art. 30, section 2, point 1.

Art. 38. 1. The functionaries or soldiers of special services, authorised accordingly by the head of the Internal Security Agency, the head of the Intelligence Agency, the head of the Military Counterintelligence Service, the head of the Military Intelligence Service or the head of the Central Anticorruption Bureau, acting within the scope of statutory tasks, having notified the President of the Institute of Remembrance, can be granted the right to inspect the data contained in the documents collected by the Institute of Remembrance within the bounds of their authorisation.

2. The documents of state security organs can be used by authorised functionaries of special services within the framework of their statutory tasks, if they contain information on the crime of espionage, a crime of a terrorist nature, a crime against the economic base of the state or a crime of corruption as conceived of by the Act dated May 24, 2002 on the Internal Security Agency and the Intelligence Agency (Journal of Laws No. 74, section 676, with later amendments) or a crime against the constitutional order of the Republic of Poland.

3. The provision of section 2 shall be applied accordingly to the functionaries of the special services of the states with which the Republic of Poland is bound with an international agreement, if those documents contain information on the crime of espionage or terrorism.

Art. 39. 1. Respectively, the head of the Internal Security Agency and the head of the Intelligence Agency or the Minister of National Defence can stipulate that, for a given time, specific documents cannot be made available to any person apart from the representatives appointed by them, if it is necessary for the state security. The organs of other special services can apply for such a stipulation by the agency of, respectively, the head of the Internal Security Agency and the head of the Intelligence Agency.

2. The documents referred to in section 1 shall constitute a classified collection in the archives of the Institute of Remembrance and are subject to special protection.

2a. Within the collection mentioned in section 2 shall be contained, for an unspecified time, the declarations referred to in art. 7a, section 2 of the Act dated October 18, 2006 on the disclosure of information about the documents of the state security organs from the years 1944-1990 and of the contents of those documents, as well as the vetting declarations made in connection with the performance, within the Internal Security Agency, the Intelligence Agency, the Central Anticorruption Bureau, the Military Counterintelligence Service or the Military Intelligence Service, of the public function

referred to in art. 4, point 24 of that Act. The provisions of sections 3-5 shall not be applied.

2b. The vetting declarations mentioned in section 2a cannot be made available to any other person apart from the representatives appointed by, respectively, the head of the Internal Security Agency, the head of the Intelligence Agency, the head of the Central Anticorruption Bureau and - within the scope of the declarations made in connection with the performance, within the Military Counterintelligence Service or the Military Intelligence Service, of the public function referred to in art. 4, point 24 of the Act dated October, 2006 on the disclosure of information about the documents of the state security organs from the years 1944-1990 and of the contents of those documents - by the Minister of National Defence, as well as by the President of the Institute of Remembrance in order to fulfil the tasks defined in art. 52a, point 2.

3. The President of the Institute of Remembrance, at the motion of, respectively, the head of the Internal Security Agency and the head of the Intelligence Agency or at the application of the Minister of National Defence, shall validate or annul the stipulation to be granted access to certain documents. The decision of the President of the Institute of Remembrance can be appealed against by the Minister of National Defence and, respectively, the head of the Internal Security Agency and the head of the Intelligence Agency with the Council of the Institute of Remembrance.

4. The stipulation is considered a state secret.

5. The head of the Internal Security Agency, the head of the Intelligence Agency and the Minister of National Defence, in consultation with the President of the Institute of Remembrance shall, every 5 years, make a periodic review of the documents gathered in the separate collection. Should it be concluded that the premises justifying the stipulation have ceased to exist, the President of the Institute of Remembrance shall, ex officio, having consulted the head of the Internal Security Agency, the head of the Intelligence Agency and the Minister of National Defence, or at the application of those organs, make the decision about the annulment or shortening of the period subject to the stipulation. The provisions of section 3 shall be applied accordingly.

Art. 39a. The provision of art. 39 shall not limit the competence of the court and that of the public prosecutor of the departmental commission as regards the cases relating to the crimes defined in art. 1, point 1, letter a, as well as the competence of the court in the vetting proceedings and that of the prosecutor of the Vetting Office or of a departmental vetting office in connection with the performance of the activities referred to in art. 52e, section 3a.

Art. 40. If the President of the Institute of Remembrance, in connection with the performance of his tasks, concludes that the documents contain information on the crimes defined in art. 5, section 1, point 2 of the Act dated May 24, 2002 on the Internal Security Agency and the Intelligence Agency, he shall immediately notify the head of the Internal Security Agency about the fact. The provision of art. 304 of the Penal Code shall not be applied.

Art. 41. (repealed).

Art. 42. If the Director of the Office for the Preservation and Dissemination of the Archival Records of the Institute of Remembrance is notified that the personal data contained in the documents are false, the information about this fact shall be included in the collection of documents concerning a given person.

Art. 43. 1. The proceedings in the cases regulated by the Act shall be carried on according to the provisions of the Administrative Code, unless it is defined otherwise by the provisions of the Act. As regards the cases defined in art. 39, the complaint with an administrative court shall not be applicable.

2. As regards the cases resolved by means of an administrative decision, in accordance with the provisions of the present Act, the organ of first instance shall be the director of a department of the Institute of Remembrance. The appellate organ is the President of the Institute of Remembrance.

Art. 44. (repealed).

## **Chapter 5**

### **The Investigative Functions of the Institute of Remembrance**

Art. 45. 1. An investigation in the cases of the crimes mentioned in art. 1, point 1, letter a, shall be commenced and conducted by the prosecutor of a departmental commission.

2. The prosecutors of the Chief Commission for the Prosecution of Crimes against the Polish Nation and those of the departmental commissions for the prosecution of crimes against the Polish Nation in the cases defined in art. 1, point 1, letter a shall have all the prosecuting powers, also in the cases subject to the judicial decisions of military courts.

3. The purpose of an investigation in the cases of the crimes referred to in art. 1 shall also be to provide a comprehensive explanation of the circumstances of the case, in particular to determine the aggrieved parties.

4. The circumstance mentioned in art. 17 § 1, point 5 of the Penal Code cannot constitute an impediment to the fulfilment of the purpose referred to in section 3. After fulfilling the purpose the proceedings shall be discontinued.

5. In the case of investigations by the Institute of Remembrance the provisions of the Penal Code shall be applied.
6. The prosecutor of a departmental commission can refrain from commencing an investigation and discontinue a commenced one in relation to the perpetrator of a crime referred to in art. 1, point 1, letter a, if, of his own accord, he disclosed to the organ appointed for the prosecution of crimes all the important information about the accomplices in the crime, as well as the circumstances in which it was committed, if the information makes it possible to commence proceedings against a given person. In refraining from prosecuting the perpetrator of a crime, the prosecutor shall allow for the degree of social harm of the unlawful act committed by him and for the extent of his guilt, as well as the type and nature of the disclosed crime; in particular, he shall determine whether it is possible to detect the accomplices to the crime in another way and assesses the importance of the disclosure of the crime for the fulfilment of the tasks of the Institute of Remembrance.
7. The prosecutor can commence proceedings in the case of the perpetrator in relation to whom the prosecution was discontinued on the basis of section 6, only if, in the course of further proceedings, he evades giving evidence or gives evidence that differs from that which gave rise to the forbearance from commencing the proceedings against him or to the discontinuation of those already started.
8. If the person in relation to whom the prosecution was discontinued on the basis of section 6 is summoned as a witness, the prosecutor at the departmental commission can issue a resolution ordering the protection of his or her personal data, even though the circumstances defined in art. 184 § 1 of the Penal Code are not applicable.
9. The appellate court proceedings started due to an appeal and application for annulment being made shall take place with the participation of the prosecutors of the Chief Commission.
10. The Director of the Chief Commission shall order an annulment, standing in for the Public Prosecutor General, in the cases referred to in art. 1, point 1, letter a, including also those pertaining to the competence of military courts.

Art. 45a. The Institute of Remembrance shall commence an investigation ex officio in the cases of the crimes defined in art. 54 and 55.

Art. 46. The President of the Institute of Remembrance, having consulted the Director of the Chief Commission, can disclose to the public, as well as to other persons than those mentioned in art. 156 § 5 of the Penal Code, the personal data of the perpetrator of the crimes referred to in art. 1, point 1, letter a, if the criminal proceedings did not end in passing a legally binding sentence on the basis of the reason indicated in art. 17 § 1, point 5 of the Penal Code or were suspended on the basis of art. 22 § 1 of that code.

Art. 47. 1. The Director of the Chief Commission shall be a prosecutor superior to the prosecutors of this Commission and of the departmental commissions. The head of a departmental commission is a prosecutor superior to the prosecutors of this commission.

1a. The directly superior prosecutors shall be:

- 1) the Director of the Chief Commission - in relation to the prosecutors performing tasks in that Commission and the heads of the departmental commissions;
  - 2) the heads of the departmental commissions - in relation to the prosecutors of a given departmental commission.
2. Other orders of the Public Prosecutor General than those defined in art. 8, section 5 of the Act dated June 20, 1985 on the public prosecution service (Journal of Laws 2002 No. 21, section 206, with later amendments), exceeding the scope of the tasks of the Institute of Remembrance, can be directed to the prosecutors of the Chief Commission and of the departmental commissions only with the agreement of the President of the Institute of Remembrance.
3. The prosecutors superior in relation to the prosecutors of the departmental commissions shall be the Director of the Chief Commission and the prosecutors of that Commission.
4. A prosecutor dismissed on account of renouncing the post of a prosecutor in the Institute of Remembrance shall have the right to return to the post held before or be assigned an equivalent post to the one held previously, if no legal impediment arises.
- 4a. The Public Prosecutor General can restore a prosecutor of the Chief Commission or of a departmental commission to the position held previously or assign him an equivalent post in a general or military prosecution service unit, if, on his behalf, the President of the Institute of Remembrance, having consulted the Director of the Chief Commission, has put forward such a motion. Proposing the motion is not associated with disciplinary proceedings.
- 4b. Should it be concluded that a prosecutor of the Chief Commission or a departmental commission cannot, for health reasons, perform service in the Institute of Remembrance, the Public Prosecutor General shall transfer him to an equivalent post in another organisational unit of the prosecution service, the Ministry of Justice or other organisational unit subordinate to or supervised by the Minister of Justice, in accordance with the competence of the prosecutor.
5. The remuneration of the prosecutors of the Chief Commission shall be defined by the provisions on the remuneration of the prosecutors of the State Prosecution Service, whereas the remuneration of the prosecutors of the departmental commissions shall be defined by the provisions on the remuneration of the prosecutors of the appellate prosecution

service. The remuneration, along with the accompanying benefits of a personal nature, shall be financed from the resources of the Institute of Remembrance.

6. In the case of the prosecutors of the Institute of Remembrance, in the matters not regulated by the Act, the provisions of the Act dated June 20, 1985 on the prosecution service shall be applied.

Art. 48. The prosecutor of a departmental commission shall order or refuse to order the commencement of an investigation into the case of the crime referred to in art. 1, point 1, letter a within the time limit of 3 months from being notified about the crime. If the person or institution which made that notification are not, within 4 months from the date of making the notification, informed about the commencement or refusal to commence the investigation, they can complain with a superior prosecutor.

Art. 49. After 3 months from the date of commencing an investigation in the case of the crime referred to in art. 1, point 1, letter a, the prosecutor who conducts it shall report to his superior prosecutor about the activities performed. Such a report shall be made after the lapse of each three-month period in the investigation. The time limits concerning the termination of the investigation defined in art. 310 of the Penal Code shall not be applied.

Art. 50. 1. The Chief Commission and the departmental commissions shall constitute organisational units of the prosecution service within the understanding of the international agreements that bind the Republic of Poland with other states and concern legal aid and legal relations in civil, family, employment and penal cases.

2. The Minister competent for justice may, at the application of the President of the Institute of Remembrance, delegate a judge to perform tasks in the Chief Commission and serve with legal aid.

Art. 51. 1. In the case of the assembly and Council of prosecutors of the Chief Commission the provisions of the Act dated June 20, 1985 on the prosecution service and the assembly and Council of the appellate prosecution service shall be applied accordingly.

2. The members of the Disciplinary Court and the Appellate Disciplinary Court for the prosecutors of the Institute of Remembrance shall be elected, in a number agreed upon among themselves, for the term of 4 years, by the assembly of the prosecutors of the Chief Commission from among the prosecutors of the Institute of Remembrance. The Disciplinary Court and the Appellate Disciplinary Court shall elect from among its composition the chairmen.

3. The Disciplinary Court in the Institute of Remembrance shall pass first instance judgements composed of three members, whereas second instance judgements - composed of five members. The set of the judges of the second instance cannot include a member of the Court who participated in passing the appealed against sentence.

4. The Director of the Chief Commission is the disciplinary superior in relation to the prosecutors of the Chief Commission for the Prosecution of Crimes against the Polish Nation and of the departmental commissions for the prosecution of crimes against the Polish Nation.

5. The Disciplinary Spokesman for the prosecutors of the Chief Commission for the Prosecution of Crimes against the Polish Nation and of the departmental commissions for the prosecution of crimes against the Polish Nation shall be appointed by the Public Prosecutor General from among the prosecutors of the Chief Commission for the Prosecution of Crimes against the Polish Nation and of the departmental commissions for the prosecution of crimes against the Polish Nation at the application of the Director of the Chief Commission for the Prosecution of Crimes against the Polish Nation. The disciplinary spokesman shall be bound with the instructions of the Director of the Chief Commission for the Prosecution of Crimes against the Polish Nation.

Art. 52. The organs of the judiciary, the prosecution offices, the organs and organisational units subordinate, supervised or subservient to the Minister of Internal Affairs and Administration, the Minister of National Defence, the Minister of Foreign Affairs and, respectively, to the head of the Internal Security Agency and the head of the Intelligence Agency, as well as the organs of government administration and local government shall be obliged, each within the scope of its competence, to provide help to the Institute of Remembrance in the fulfilment of the tasks of the Institute of Remembrance referred to in art. 1.

## **Chapter 5a**

### **The Vetting Functions of the Institute of Remembrance**

Art. 52a. The tasks of the Vetting Office shall especially include:

- 1) keeping a register of the vetting declarations referred to in art. 7 of the act dated October 18, 2006 on the disclosure of information on the documents of the state security organs from the years 1944-1990 and of the contents of those documents;
- 2) the analysis of vetting decorations and the collection of necessary information for a correct assessment thereof;
- 3) the preparation of vetting proceedings;

- 4) the notification of proper organs about the lack of fulfilment by nonjudicial organs of the obligations imposed by the act;
- 5) (expired);
- 6) the preparation and publication, on the basis of the documents collected in the archives of the Institute of Remembrance, of catalogues containing the personal data of the employees, functionaries and soldiers of the state security organs, indicating the service rank of the held posts and the state security organs in which they served or worked;
- 8) The preparation and publication of catalogues containing the personal data of the persons in relation to whom there are existing documents which testify that the security organs collected information on them on the basis of deliberately gathered data, including data collected in a confidential way, and it has been concluded that there are no existing documents relating to the persons which confirm that they were employees, functionaries, soldiers of the state security organs or that they collaborated with the state security organs; the publications shall not include the personal data of the persons in relation to whom there are existing documents which justify the publication of their personal data on the strength of point 8; before being placed in the catalogue it is necessary to obtain the approval of the person to which the data refer;
- 9) the preparation and publication of catalogues containing the personal data of the persons who occupied managing positions in the former Polish Workers' Party and in the former Polish United Workers' Party, as well as in the United People's Party and the Democratic Party, and who were also members of the Council of Ministers of the Communist state until August 23, 1989 or were the managers or central state administration organs in that period.

Art. 52aa. The tasks of a departmental vetting office shall especially include:

- 1) the preparation of the data for the register referred to in art. 52a, point 1;
- 2) the fulfilment of the tasks defined in art. 52a, points 2-4;
- 3) the preparation of the catalogues referred to in art. 52a, points 5-8.

Art. 52b. 1. Each catalogue referred to in art. 52a, points 5, 6 and 8, shall include:

- 1) the personal data: the name and surname (the name and surnames, including previous names and surnames, if they were used, as well as the family name), the names of the parents, the date and place of birth;
- 2) a description of a given type of work, service or collaboration;
- 3) information about the types of the documents collected in the archival resources of the Institute of Remembrance which contain the personal data of the person whose personal data have been inserted in the catalogue;
- 4) the course of work, service or collaboration with the state security organs of the person whose personal data have been inserted in the catalogue;
- 5) the contents of the records in the documents collected in the archives of the Institute of Remembrance which refer to the person whose personal data have been placed in the catalogue, successive records being treated separately;
- 6) a note about the possible supplements, corrections, updates, explanations or documents provided by the person whose personal data have been placed in the catalogue, which have been incorporated in the collection of the documents of the state security organs stored in the archives of the Institute of Remembrance;
- 7) information about making the declaration referred to in art. 52a, point 1;
- 8) information about the result of the vetting procedure.

2. The catalogue referred to in art. 52a, point 5 shall also include information about the application referred to in art. 52d, section 2.

2a. The catalogue referred to in art. 52a, point 7 shall include the data mentioned in section 1, point 1 and 6-8.

3. At the application of the person whose personal data have been placed in the catalogue referred to in art. 52a point 5, the catalogue shall incorporate the clarifications, presented by that person, which refer to the information mentioned in section 1, points 2-5.

4. The records referred to in section 1, point 5 shall constitute the information contained in the registers, archival registers, files and documents of a similar nature.

5. The catalogue referred to in art. 52a, point 6 shall not include the personal data and information relating to the persons:

- 1) who, by virtue of art. 7a, section 1 of the Act dated October 18, 2006 on the disclosure of information about the documents of the state security organs from the years 1944-1990 and of the contents of those documents, do not communicate information about their work or service in the state security organs in a vetting declaration;
- 2) who make the vetting declaration according to the principles defined in art. 11, section 4 of the Act mentioned in point 1;
- 3) who, by virtue of art. 3, sections 1 and 2 of the Act dated April 13, 2007 on the change of the Act on the disclosure of information about the documents of the state security organs from the years 1944-1990 and of the contents of those



documents and the change of the Act on the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish

Nation (Journal of Laws No. 83, section 561), do not communicate information about their work or service in the state security organs in a vetting declaration;

4) who are referred to in art. 4 of the Act mentioned in point 3.

Art. 52c. (expired).

Art. 52d. 1. The person whose personal data have been placed in the catalogue referred to art. 52a, point 5, who does not accept the information contained a catalogue which refers to the person can make a vetting declaration. The provisions concerning the vetting procedure shall be applied accordingly.

2. At the application of the person whose personal data have been placed in the catalogue referred to in section 1, and who has made a vetting declaration, anyone has the right to inspect the copies of the documents relating to the person which have been gathered in the archives of the Institute of Remembrance. The provisions of art. 30, sections 1, 3 and 4 shall be applied accordingly.

3. The rights resulting from section 2 can be executed by the closest person to the deceased as defined by art. 115 § 11 of the Penal Code, with the reservation that that person shall not make a vetting declaration.

4. The person referred to in section 3, who does not accept the information contained in the catalogue mentioned in art. 52a, point 5 which relates to the deceased, can file a suit. The court determines the grounds lack thereof for the insertion in the catalogue of the personal data of the deceased. The provisions relating to the vetting procedure shall be applied accordingly.

Art. 52e. 1. The analysis of the vetting declarations shall be carried out allowing for the order in which the public functions are enumerated in art. 22, section 1 of the Act dated October 18, 2006 on the disclosure of information about the documents of the state security organs from the years 1944-1990 and of the contents of those documents.

2. In justified cases the analysis of the declarations according to the order referred to in section 1 can be omitted. The information about such omissions, along with the justification, shall be communicated to the court.

3. In the case of a doubt as to the truthfulness of the declaration, the prosecutor of the Vetting Office or the prosecutor of a departmental vetting office shall inform the person obliged to make the declaration about the fact and shall also inform another possibility of providing clarifications; the classification proceedings shall be described in a report.

3a. The prosecutor of the Vetting Office and of a departmental vetting office, within the scope of the tasks defined in art. 52a, point 3, can require to be sent or presented the files or documents and written explanation, and, if necessary, hear the witnesses, consult experts and commandeer objects or perform searches, as well as apply penalties for breach of order. In the case of these activities the provisions of the Penal Code shall be applied accordingly.

4. Within the time limit of 6 months from the date of being delivered the information referred to in section 3, the prosecutor of the Vetting Office or the prosecutor of a departmental vetting office shall file a application with the court to commence the vetting procedure or shall notify the person obliged to make the declaration about the lack of grounds for filing such a application.

Art. 52f. The prosecutor of the Vetting Office, the prosecutor of a departmental vetting office or the authorised employees of the Vetting Office and of the departmental vetting offices shall have full access to the documentation, records, information aids, regardless of the form in which they are recorded, which had been collected or created until July 31, 1990 by:

1) the Minister of National Defence, the Minister of Internal Affairs and Administration, the Minister of Justice and the Minister of Foreign Affairs, as well as by the organisational units subordinate, subservient or supervised by them;

2) the head of the Internal Security Agency and the head of the Intelligence Agency.

Art. 52g. 1. With the reservation of section 2, the provisions of art. 47 and 51 shall be accordingly applied to the prosecutors of the Vetting Office and to the prosecutors of the departmental vetting offices, allowing for the fact that the competence of the Director of the Chief Commission in relation to the prosecutors of the Vetting Office and the prosecutors of the departmental vetting offices is accorded to the director of the Vetting Office.

2. The Director of the Vetting Office is a prosecutor superior to the prosecutors of that Office and of the departmental vetting offices. The head of a departmental vetting office is a prosecutor superior to the prosecutors of that office.

## **Chapter 6**

### **The Educational Functions of the Institute of Remembrance**

Art. 53. The Institute of Remembrance:

1) shall inform the society about the structures and methods of action applied by the institutions within the framework of which the crimes against the Polish Nation were committed and shall inform about the structures, the personnel and the

methods applied by the state security organs;

2) shall conduct academic research about the recent Polish history, as well as grant access to the collected documents to other academic institutions and persons or purposes of such research, complying with the conditions defined in the Act;

3) shall provide information about the collected documents and publish academic and popular academic publications, including archival inventories;

4) shall disseminate within the country and abroad the results of its work and of the research performed by other institutions, organisations and persons on the problems which are the subject of its activity;

5) shall carry on educational, exhibition and publication activities;

6) shall formulate conclusions relating to historical education.

7) shall announce annual competitions for financing by the Institute of Remembrance scientific research on the contemporary history of Poland.

## **Chapter 7**

### **Penal provisions**

Art. 54. 1. Any person who, without being authorised, destroys, hides, damages, removes or modifies the contents of the documents or information records subject to be transferred to the Institute of Remembrance on the basis of art. 25 and 28, section 1 or those which are in the archives of the Institute, otherwise thwarts or considerably impedes the authorised person or institution in becoming familiar with them or disrupts or makes it impossible to automatically collect or transfer of such information shall be subject to the penalty of imprisonment of between six months and 8 years.

2. The same punishment shall apply to the person who, being in possession of the documents or information records subject to be transferred to the Institute of Remembrance on the basis of section 1, refrains from transferring them, impedes their transfer or thwarts it.

3. (repealed).

4. (repealed).

Art. 55. Anyone who publicly and contrary to the facts denies crimes referred to in art. 1, point 1 shall be subject to a fine or the penalty of imprisonment of up to 3 years. The sentence shall be made public.

## **Chapter 8**

### **Changes in the Valid Provisions, Temporary and Final Provisions**

Art. 56. (omitted).

Art. 57. (omitted).

Art. 58. (omitted).

Art. 59. (omitted).

Art. 60. (omitted).

Art. 61. (omitted).

Art. 62. (omitted).

Art. 63. With the date of this Act taking effect the Chief Commission for the Investigation of Crimes against the Polish Nation - the Institute of National Remembrance shall be liquidated. The liquidator shall be appointed by the Minister of Justice.

Art. 64. The President of the Institute of Remembrance, appointed for his first term, shall present the Council of the Institute of Remembrance with the statute of the Institute to be endorsed and shall create the organisational units of the Institute of Remembrance before the lapse of 3 months from the date of taking the oath.

Art. 65. The Sejm of the Republic of Poland shall elect the Council of the Institute of Remembrance within the time limit of 1 month from the date of the Act taking effect.

Art. 66. The Council of the Institute of Remembrance shall present before the Sejm the candidate for the President of the Institute of Remembrance for the first term, no later than after 1 month from the date of the first session of the Council of the Institute.

Art. 67. The Sejm of the Republic of Poland shall elect the President of the Institute of Remembrance for the first term within the time limit of 1 month from the date of him being presented as the candidate.

Art. 68. 1. The archival resources of the former Chief Commission for the Investigation of Crimes against the Polish

Nation - the Institute of National Remembrance and of the district commissions shall become the archival resources of the Institute of Remembrance.

2. The property of the former Chief Commission for the Investigation of Crimes against the Polish Nation -the Institute of National Remembrance and of the district commissions shall become the property of the Institute of Remembrance.

Art. 69. As regards the cases which are not regulated by the Act and which concern the academic employees of the Institute of Remembrance, the provisions of the Act dated July 25, 1985 on research and development units (Journal of Laws of 2001 No. 33, section 388, with later amendments) shall be applied.

Art. 70. In the case of Institute of Remembrance employees other than the prosecutors and the academic employees the provisions of the Act dated September 16, 1982 on the employees in state institutions (Journal of Laws of 2001 No. 86, section 953, with later amendments) shall be applied.

Art. 71. For the activities of the Institute of Remembrance defined in art. 1, the provisions of the act dated August 29, 1997 on the protection of personal data (Journal of Laws of 2002 r. No. 101, section 926, with later amendments) shall not be applied.

Art. 72. The Act dated April 6, 1984 on the Chief Commission for the Investigation of Crimes against the Polish Nation – the Institute of National Remembrance (Journal of Laws No. 21, section 98; and of 1991 No. 45, section 195) shall lose its effect.

Art. 73. The act shall become valid after 30 days from the date of publication.

ANNEX (expired)