Poles and Privacy: Non-Issues

Background Report in Draft Form

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March 2005

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Introduction:

“...interest in privacy is heightened as a result of two factors: the ubiquitous presence of information and communication technology in society, and the crisis following the terrorist attack of 11 September, 2001”

Appendix A - Overview of Public Opinion Research Regarding Privacy

Elia Zureik

As it happens, neither of the two factors mentioned above are present in contemporary Poland. It stands to reason that this is the primary reason why there seems to be no interest (by individuals or business) in ‘privacy’ issues. However, relevant legislation, which conforms to EU standards, has been enacted since 1989.

This report summarises efforts too seek out all possible public sources of opinion surveys in Poland as well as an overview of privacy-related legislation.

‘Historical legacy’ may be a disproportionately important factor in a society like Poland in explaining the evident lack of interest in privacy issues. The fact of being under communist dictatorship for over 40 years, with the concomitant permanent and pervasive invigilation of all citizens by secret services, has left an indelible mark on Polish society when it comes to privacy issues.

However, it would be an error to simply conclude that privacy is not valued. There are many other legacies of communist rule that also play an important role, such as poverty – resulting in
limited internet access, dependence on state-subsidised social services – built on and requiring high levels of information centralisation, etc. Moreover, lack of trust in rule-of-law, in government or institutions (public or private) as entities capable of guaranteeing privacy extends farther into the past than the communist system and the depth of its entrenchment should not be underestimated. A relatively low proportion of Poles has bank accounts (56.8%) for example and even fewer have credit cards (12.8%) and less than half bankcards (48%)\(^1\).

Above all one should not forget the very practical reasons for lack of broader interest in ‘privacy’ or protection of personal data. And one closely related to more quantifiable factors - the ‘real’ degree of globalisation of Polish society (only 34% profess to understand the term\(^2\). Until recently (the mid-1990s) personal information – state of otherwise) was kept the old-fashioned way on index card files, dossiers, file folders, etc. scattered throughout any number of offices. It was only the onset of computerisation of bureaucracy that raised concerns over the absence of pertinent legislation. Indicators of the overall level of connectivity of Polish society include the number of people with regular Internet access, with home computers, with televisions, with telephones (stationary or cellular). There is also the question of knowledge of languages other than Polish.

Thought partially also part of the communist legacy, but fitting into a broader European model, Poland is a highly centralised ‘nanny’ state. As such, citizens for the most part do not hesitate in trading personal privacy in return for social services (paltry though they may be). This is not likely to change significantly in the near future, if popular and professional resistance to reforms is any indication. However, comparative data (discussed in more detail below) indicates that there is no great disparity between Polish perceptions of appropriate or desirable levels of state intervention and those of its Western European neighbours, particularly Italy, France and Spain.
All these factors are changing as Poland becomes wealthier and continues on its path of re-joining Western society. But for the moment, the groundwork (i.e. legislation) has been laid but it will likely take a change in generation before mind-sets, habits and material levels follow suit and the pre-occupations of Western societies find any resonance.

I. Polling Data:

Several different polling agencies were contacted in order to determine whether they had ever conducted public opinion polls regarding perceptions of ‘privacy’ in Polish society. Specifically they were asked about topics such as protection of personal data, security/insecurity on the Internet, ‘privacy’ in the workplace, as well as broader questions. Unvaryingly the answers were negative. The inevitable conclusion is that no polling companies in Poland have to date studies on these issues.

Companies contacted include: http://www.opinie.pl/, which specialises in on-line surveys and marketing; Ipsos (http://www.demoskop.com.pl/1_2_1.html); Pentor International Research (www.pentor.com.pl); Gallup (no Polish website); ARC Rynek i Opinia, the local MORI affiliate (http://www.arc.com.pl/pol/); Harris Online (no Polish office); Opinia Agencja Badań Rynku (http://www.opiniaabr.pl); CBOS (Centrum Badań Opinii Społecznej – Public Opinion Research Center) (www.cbos.com.pl) and TBS OBOP. These latter two are the largest and most entrenched on the Polish market since both were established still under the communist system. They continue to receive the most government contracts and therefore have the most extensive database of non-commercial polls.
Several sociology departments and/or university institutes (in Katowice, Kraków and Warsaw) were also contacted. However none had any significant studies on the subject. The exception was the Institute of Social Studies at the University of Warsaw (Instytut Studiów Społecznych, Uniwersytet Warszawski), which implements the International Social Survey Programme (http://www.iss.uw.edu.pl/osrodki/obs/pgss/pl/).

The overwhelming majority of non-commercial or marketing-related polls were concerned with what can only be termed pure politics and the economy. The former term covered the gamut from popularity of individual politicians, various issues (EU accession negotiations, budget reform plans, etc.) or current scandals (‘Rywingate’ most recently), support for the government or individual parties, etc. The rest, for the most part, covered rather trivial topics (favourite colours/hobbies, holiday plans) or very broad and general ones (satisfaction with the preceding year, predictions/hopes for the following year, etc.). Polls regarding the state of the economy, unemployment, etc. also frequently overlapped with political issues.

While no information regarding privacy issues per se was found, other data can be considered in order to potentially explain why there is a lack of such polling information and perhaps contribute to the shaping of an appropriate future questionnaire. There are several seemingly peripheral topics that can be revealing about perceptions of privacy and/or are factors that limit the formation of strong opinions on the topic. These include the aforementioned limitations of ‘globalisation’ of Polish society, but also indicate the incredible rate at which this is changing, opinions on the terrorist attacks on New York, Washington DC and Madrid, and the appropriate/desirable levels of government intervention in society (as compared to several other countries around the world). Another issue which may be of interest is the issue of ‘lustration’, a
phenomenon directly tied to the communist past and bound to the controversy surrounding the opening of secret police files and acting on the information contained therein.

II Historical Legacy

Impermeable layers of secrecy were not necessarily new to Poles after the 1945 Soviet take-over and the founding of the communist Polish People’s Republic (PPR in English - PRL in Polish). Poland had been under foreign domination almost continuously since the end of the 18th century, the exception being the Second Republic that lasted from 1918 to 1939. Communism at its core is concerned with bringing about a complete restructuring of society. In practice, the desired effect is an entirely atomised society, since people with no interpersonal ties, allegiances or faith (other than the ‘system’) are far easier to control and harness as machines. In theory, citizens of the new ‘workers’ paradise’ were thankful for liberation from the capitalist and national oppressors and joyfully expressed their readiness to renounce their material and nationalist-bourgeois ambitions and work for the benefit of the state (not to mention the greater glory of world communism). Reality, obviously, was somewhat different. The famous adage ‘we pretend to work – they pretend to pay us’ simply reflects what to a large extent the system functioned on. The state lied to the people – so they permanently presented a false front to the state.

There are two ways in which this legacy impacts perceptions of ‘privacy’ as an issue; or rather causes the issue to be understood in a way distinctly different from other (‘Western’) societies. First is the phenomenon of ‘internal migration’, second, the entire tradition of struggle for freedom, dating back to the end of the 18th century, was focussed on collective rather than individual rights – freedom of expression, freedom to gather and national liberation – these were the priorities. It is not coincidental that it was the trade union Solidarność (Solidarity = Unity) that played a central role in the destruction of system, nor should the meaning of the Roman Catholic Church be overlooked.
The phenomenon of internal migration has been well defined by numerous dissident writers – perhaps most succinctly by Czesław Miłosz in his work *The Captive Mind*. Essentially the idea is part and parcel of the concept of non-violent resistance, of defying the state/status quo when outwardly manifest physical struggle is impossible. In other words: “Remain free in your heart and intellect while your body is bound”. Adam Michnik’s collection of essays *Letters From Prison* is a fine example of propagating the notion of non-violence in the Polish intellectual tradition under communism. However he is also a fair representative of his upbringing and generation since many similar concepts and approaches are echoed in, for example, Vaclav Havel’s writings from the same period. How these concepts impact perceptions of privacy among the general public (not the exalted intelligentsia) is simply the broadly understood fact that the essence of an individual is not the sum of his documents.

There were of course practical reasons for intentionally misleading state authorities. After the communist take-over many people had to hide (or tried to) their real identities, or class backgrounds, or military service records, among several other categories or face potential persecution by the new state authorities. Later, as the grip of the regime tightened and became more permanent, it was always more prudent to nod agreement to various lies proffered by the regime in order to remain as invisible as possible.

There were several periods of unrest in Poland under communism, the most prominent in 1956, 1968 and 1980-81. The last marked the ultimate turning point primarily due to the scale achieved and the unprecedented unity achieved by the workers and opposition intelligentsia, which tipped the scales and emboldened otherwise unengaged people to protest. The visit of Pope John Paul II to Poland in 1979 is widely considered to mark the beginning of open dissent – since it was the first mass gathering since 1945 and demonstrated the degree of existing unity. The Church had always played a unifying role for Poles, but never at a more critical moment. The abduction and murder of Father Jerzy Popieluszko, the spiritual leader of the Solidarity trade union, in 1984
further served to galvanise opposition from all shades of opposition. The ruthless mass repressions that followed the strikes in 1980 ultimately strengthened the opposition movement rather than destroying it, even though it took another several years to take the system down.

The tradition of struggling for common (national) values is reflected in Polish culture – particularly literature – since the end of the 18th century (the Partitions). It can be clearly seen in Adam Mickiewicz’s poems through Zbigniew Herbert’s and (Nobel laureate) Wisława Szymborska’s. Fighting for the right to privacy has simply never been on the agenda, historically speaking.

II. a) Lustration

A complicated question in all post-communist countries is how to handle the legacy of the secret police – in Poland these were the SB (Służba Bezpieczeństwa) and UB (Urząd Bezpieczeństwa). No country seems to have found a fully satisfactory solution to the issue. East Germany simply opened all their files to the public, which tore apart many lives as people found out those they felt closest to reported on them regularly to the secret service. Even as early as July 1994 opinions on the need for ‘de-communisation’ were almost evenly split: 42% of Poles felt that it was necessary and 46% didn’t feel it was important. Meanwhile, 28% believed that there were many former secret service workers occupying high public office, 42% there were some – only 5% felt there were none. As many as 75% of Poles felt that former secret service workers (informers) should be banned from holding public office or performing state functions – only 15% felt they should be allowed. 3 Figures for October 1999 demonstrate marked increases at the extremes with two-thirds (68%) believing that there were many people holding high public offices who had formerly co-operated with the secret services. However, 20% believed there were none and 48% believed there were only a few. Still, over two-thirds of Poles (71%) believed that former secret service workers should not hold important public office.4
Lustration has been a complicated and much debated topic in Poland. After years of debate (a final version of the law was only enacted in March 2004 and is still pending a Constitutional Court decision, though earlier versions were introduced in 1997) there is a ‘Lustration Law’ in effect and the National Remembrance Institute was formed to act as curator of all secret police files with prosecutorial powers. In March 2002, a new version of the law was introduced that excluded intelligence and counterintelligence agents, as well as order-guard personnel from persecution under the lustration law. In fact, by definition of the new law ‘agents’ would only be considered those who informed on – and therefore sought to undermine or thwart - the Church, opposition, trade unions, national aspirations of independence or the personal wellbeing of other people. The “New Lustration” was passed on 8 March but already on 4 March an appeal was filed with the Constitutional Tribunal to review the law. This appeal was submitted by virtually all non-post-communist MPs – 122 in total (the “New Lustration” was obviously submitted by the ‘post-communist’ SLD party currently in office – it is a logical move for them since many of their members, including sitting MPs, could face charges under the old version of the law). Meanwhile, people were split evenly in their positive and negative assessments of the proposed changes (23% each) while the majority were indifferent (30%) or undecided (25%)\(^5\).

Public opinion on lustration has remained rather steady since the collapse of communism. In 1992, 41% of respondents polled stated that all former secret service workers should be exposed and only 19% that none. The majority (45%) felt that outing former secret service workers would be equally harmful and beneficial for the country. Whatever the responses, an overwhelming 71% felt that former workers of the secret services should be banned from holding public office and performing state functions.\(^6\) The question of whether those holding public offices should be submitted to the lustration process has also been rather steadily supported: in 1994, 1996, 1997, 1999 and 2002 those answering ‘Yes’ was 57%, 57%, 76%, 56% and 56% respective and ‘No’ 36%, 24%, 12%, 31%, 31%.\(^7\)
Compared to June 1994 there was an increase (from 57% to 76%) in December 1997, in those who felt that lustration was necessary. Almost three-quarters (73%) felt that every citizen had the right to access his secret service files, but only 44% expressed an interest in doing so and 42% didn’t think that the special services had a file on them.\textsuperscript{8} In January 1999, CBOS found that over the preceding year the number of Poles wanting to see their files decreased while the number of those convinced that there was nothing about them in the archives increased. Interest in the files increases proportionately to age – up to the age of 64 – with greatest interest expressed by those between the ages of 55-64, and is greatest among those living in the largest urban centres. Former members of the Solidarity Trade Union and of the PZPR (\textit{Polska Zjednoczona Partia Robotnicza} – Poland’s communist party) expressed almost equal interest in seeing their files. Over half of those polled were for a complete opening of the files – in the manner of East Germany but theses people were generally also against any sort of limiting of their rights by the government/authorities so were not particularly open to negotiations or reasonable arguments on the matter.\textsuperscript{9}

Currently, the ruling post-communist SLD (\textit{Sojusz Lewicy Demokratycznej} [Democratic Left Alliance]) party is undergoing a potentially crippling internal split and rapidly losing support – to the point that they will likely be forced to call early elections. This is partially due to growing public perceptions that the post-communists are unref ormably corrupt and continue to work against the interests of the state and citizens.

\textbf{III Globalisation}

In terms of ‘globalisation’ most surveys on the topic of connectivity in Polish society reveal that the pace of changes is astounding. Considering that the first official e-mail was sent in Poland in 1991, communication technology has expanded very rapidly, and continues to do so. However
there is still a very long way to go before Poland reaches the levels of Western Europe, not to mention North America.

In 1997, only 5% of Poles declared that they had Internet access, and the majority of these could only access at work, school or university. The number of respondents who said they had internet access at home could qualify as acceptable margins of error. Only 8% of respondents had PCs at home, these were for the most part professionals, businessmen, had higher education and generally belonged to the highest earning class. By April 1999, 17% of Poles declared they had computers in their homes. By March 2002 – 27% declared they had computers at home – half of which had Internet access. However, in June 2002, 18% of those polled defined themselves as ‘Internaughts’ – i.e. accessed the Internet at least one a month (from January to June 2002).

As of February 2004, 35% of Poles have computers at home, and over one-fifth (21%) have Internet access, over three-quarters (78%) have stationary home telephones and over half (54%) cable or satellite television. Currently, 14% of Poles have a personal computer, stationary telephone or cable television, but do not have Internet access. One quarter of Poles (26% - a 9% rise since March 2002) use the Internet (the WWW or has an e-mail account). And 3% of adult Poles declared that they had bought something over the Internet in the past three months. According to TNS OBOP’s on going ‘Interbus’ study, the figures for Internet purchases by ‘Internaughts’ stabilised at 20% in February 2004.

**IV The Impact of 9/11**

Immediately following the terrorist attacks on New York and Washington, which of course received very extensive media coverage, over half of Poles surveyed (51%) were concerned that
Poland too could be a target of similar attacks. Just over one third believed that terrorism did not constitute a threat to Polish security (37%). Substantially more Poles feared the potential consequences stemming from the attacks. Almost two-thirds (65%) of Poles believed that the terrorist attacks in the US would lead to conflict on a global scale. CBOS, who conducted this poll, pointed out that these results, and the feelings of threatened security, were comparable to those indicated in their poll from April-May 1999, taken during the NATO intervention in Yugoslavia.\textsuperscript{14} Fears that Poland could be a target of terrorist attack peaked at 54% in December 2001 then dropped to 45% by June 2002. Those responding that they did not believe that terrorism constituted a real threat to Polish security increased to 44% by June 2002.\textsuperscript{15}

However, even prior to the attacks in Madrid on 9 March, in January 2004, 71% believed that Poland would be a target due to Poland’s participation in the occupation of Iraq – only 21% were of the opposite view.\textsuperscript{16}

V Role of Government

The International Social Survey Programme measures responses on various topic blocs in several different countries. Relevant to this summary are the findings regarding the role of government, which measures professed interest in politics, appropriate or desirable level of government intervention in specific sectors, compares expectations of citizens versus perceived capabilities of government, trust toward elected authorities, etc. The countries involved are divided into three sub-categories. The first groups together Japan, Australia, the USA and Canada. The second – Western Europe: France, Spain, Italy, (former) West Germany, Sweden, Norway, Great Britain and Israel. And the third includes post-communist countries - Poland, Slovenia, Czech Republic, (former) East Germany, Hungary, Russia, Bulgaria and Latvia.
In general, all the European countries – east or west – tend to have closer results on all questions asked. Figures for Poland specifically stay within the averages of Western European countries. Interestingly, on questions regarding government intervention in specific economic spheres

Real discrepancies between Eastern and Western Europe are to be found in belief in the role individuals can play in changing/bettering/effecting the way their country is run; in effectiveness or fairness of taxation systems; in political radicalism; and in increased government spending (far higher in Eastern Europe).

In terms of privacy issues there was one relevant question: States have a large amount of various information about its citizens that can be quickly accessed by computer. Does this constitute...a various serious threat to the privacy of citizens [1]...a rather serious threat [2]...this is not a serious threat [3]... this is not at all a threat to the privacy of citizens [4]. The percentage of respondents who answered [1] were as follows:

USA – 37  
Australia – 32  
Canada – 31  
Japan – 29  
Norway – 34  
France – 34  
Israel – 28  
Sweden – 27  
Great Britain – 26  
Italy – 23  
Spain – 19  
Germany (West) – 18  
Hungary – 22  
Germany (East) – 20  
Czech Rep. – 19  
Slovenia – 17  
Russia – 16  
Latvia – 11  
Poland – 11
VI Legislation

Before 30 April 1998 (the date that the Act on Protection of Private Data was enacted) personal data could only be protected by means of appropriate sections of the Civil Code (articles 23 and 24). As mentioned above, one practical reason for the delay in raising this issue was the lack of automation in Polish bureaucracy. Under these conditions, the risk that someone could access and irretrievably alter (erase, etc.) personal data was (relatively) minor. However, the information revolution has made its way to Poland. Over the course of the 1990s more and more information was being transferred to central, consolidated databases that could quickly sort and order information according to any desired category – including ‘sensitive’ information such as state of health, sexual preferences, political views, confession, etc. The increasing presence of the Internet also precipitated changes.

Poland’s political ambitions also played a significant role. Since it regained its sovereignty in 1989, Poland charted its political course decidedly westwards and was determined to re-join the family of western European states. While joining NATO was the more immediate goal in 1997, much legislation was passed in the 1990s that was mindful of European legislation, directives and the like.

All this led to the situation where new threats to personal security and privacy of citizens arose that was not addressed by existing legislation.

Specifically, among other issues:

- There were no regulations concerning manners of securing databases
• There were neither regulations governing data base administration nor were the responsibilities of database administrators defined
• There were no independent controls that verified that information entered into databases was correct – most frequently because there was nothing requiring that a person be notified that they were being entered into a database. Moreover, existing legislation did not give individuals the right to see and more importantly correct inaccuracies or remove information deemed inappropriate in their own personal files
• There was no regulations regarding access to personal information by third parties.

Poland’s existing civil code was not sufficient an instrument to address the issues defined above. Mainly this is because the civil code could only be applied once a crime had been committed – in short it was not pro-active. Moreover, it remained within the realm of civil proceeding and therefore attempts to punish wrongdoers were left to the initiative (and expense) of the private citizens.

On 29 August 1997, the Sejm of the Republic of Poland passed the The provisions regulating the rules of personal data processing were introduced into Polish legislation by the Act of 29 August 1997 on the Protection of Personal Data (unified text: Journal of Laws of 2002 No. 101, item 926 with later amendments). The Act generally follows the guidelines established by Directive 95/46/EC (24 October 1995) of the European Parliament and of the Council and is compatible with the general policy of the European states. Introduction of the provisions concerning the protection of personal data into the Polish legal system allowed Poland to sign Convention No. 108 of the Council of Europe on 21 April 1999. This was ratified on 24 May 2002. The aforementioned act is an essential component of the Polish personal data protection system, which is composed first of all, besides provisions of this act, of provisions of the Constitution:
Article 47 guaranteeing everyone’s right to privacy and Article 51 guaranteeing everyone’s right to have the information pertaining to him/her protected.

The Act determines the principles of personal data processing and the rights of natural persons whose personal data is or can be processed as a part of a data filing system. The Act applies to the processing of personal data in computer systems, files, indexes, books, lists and other registers.

On 17 February 2004, the President of the Republic of Poland signed the Act of 22 January 2004 on the Amendment of the Act on the Protection of Personal Data and the Act on Remuneration of Persons Holding State Managerial Posts (Journal of Laws No. 33, item 285). The amended provisions will enter into a force on the day the Republic of Poland acquires the European Union membership, on May 1, 2004.

The Act is based on Articles 47 and 51 of the Constitution, which read:

**art. 47:**

Everyone shall have the right to legal protection of his private life and family life, of his honour and good reputation and to make decisions about his personal life.

**art. 51:**

1. No one may obliged, except on the basis of statute, to disclose information concerning his person.
2. Public authorities shall not acquire, collect or make accessible information on citizens other than that which is necessary in a democratic state ruled by law.
3. Everyone shall have a right of access to official documents and data collections concerning himself. Limitations upon such rights may be established by statute.
4. Everyone shall have the right to demand the correction or deletion of untrue or incomplete information, or information acquired by means contrary to statute.
5. Principles and procedures for collection of and access to information shall be specified by statute.
The Inspector General for the Protection of Personal Data (Generalny Inspektor Ochrony Danych Osobowych - hereafter GIODO) is the central administrative organ responsible for carrying out inspections of the maintenance of databases and investigating complains. It is appointed to a four-year term by the Sejm, approved by the Senate. According to article 12 of the Act, GIODO is responsible for checking that databases are maintained properly according to the law, issuing administrative decisions, investigating complains, as well as registering new databases. Additionally, GIODO provides information about existing databases, comments (not binding) on proposed legislation that touches on privacy issues, proposes improvements to existing legislation and acts as the international contact and the Polish state’s representative on privacy issues. GIODO submits an annual report on its activities to the Sejm.18

Certainly, the undeniably positive side effect of Poland’s late start in privacy legislation is that there was little to amend in order to bring it in-line with European regulations and legislation.

Independent sites dedicated to privacy issues:
The ‘Tajne-Jawne’ site (Secret-Public) (http://www.t-j.cad.pl/) offers perhaps the only comprehensive overview of the history of privacy legislation in general and of the evolution of Polish law.
“The Psychology of Privacy” (http://www.kjedruszczak.webpark.pl) contains a good bibliography and links to Polish and international websites concerned with privacy. However, as the title suggests, the majority of content is concerned with psychological aspects of ‘privacy’ – very broadly understood.

2 CBOS poll BS/5/2004: “ Społeczne Rozumienie i Oceny Globalizacji” January 2004
3 TNS OBOP „Opinie Polaków na temat lustracji”, K.044/94, July 1994
4 TNS OBOP „Polacy o lustracji i dekomunizacji”, K.140/99, October 1999
6 TNS OBOP „O aktualnych sprawach (rola polityków, dekomunizacja, lustracja)”, K.035/92, 30 June 1992
8 CBOS poll Badanie "Aktualne problemy i wydarzenia" (91), 11-16 December '97
9 CBOS poll Badanie "Aktualne problemy i wydarzenia" (104), 6-12 January '99 - 55% of those polled felt that every citizen should have access to their files from the communist period. Only a third (33%) declared that they
wanted to see their own file; but only 10% had no interest in the matter. Over half of Poles (54%) didn’t think that
the secret services even had a file on them.

10 CBOS poll “Poles and Computers” Badanie "Aktualne problemy i wydarzenia" (83), 11-15 April 1997
11 CBOS (142) 1-4 March 2002
12 TNS OBOP “Internet Access” IP22-02, June 2002
prblemy i wydarzenia” (165)
14 CBOS "Aktualne problemy i wydarzenia" (136) 13 - 16 September 2001
15 CBOS poll 7-10 June 2002
16 CBOS “Aktualne Problemy i Wydarzenia” (164) 9-12 January 2004
17 (ISSP 1996/97): Role of Government (komputerowy zbiór danych) Opracowanie: Bogdan Cichomcki, Instytut
Studiów Społecznych, Uniwersytet Warszawski; question Gv7.
18 www.giodo.gov.pl