

Controlling the Use of Information Acquired Through Special Investigation Devices

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Regulating the Use of Special Investigation Devices (SID)

The huge discrepancy between the number of requests for SIDs granted vs. those rejected, currently in favor of the former, is evidence enough that there is something wrong with the existing control mechanism in the court system. At the same time, the court is the only institution to exercise such control, based on the assumption of its impartiality. The law should clearly stipulate the regime for the use of SIDs. It should spell out clearly the cases in which the use of SIDs is crucial to the investigation, as well as outline the criteria for granting a request for SID. At present, the courts have license to interpret those conditions as they see fit, which leads to lack of consistent court practices, on the one hand, and to a high level of subjectivism in the decision making process, on the other.

More Effective Parliamentary Oversight

Along with these measures, it is necessary to improve the role of the parliamentary oversight, as an instrument for public monitoring of the work of the investigation services. This will increase the control in using SIDs. Another option would be to make the subcommittee in charge of overseeing the use of SIDs according to art. 346 of the Act on SIDs part of the Committee on Internal Security and Order, whose mandate includes also overseeing the end users of the information acquired through SIDs. A pressing need is the improvement of the accountability to the subcommittee of the institutions permitted to use SIDs. The subcommittee should have accurate and adequate information about the number of SIDs used, how much they cost and their effectiveness. This will allow the National Assembly to control better and to enforce the necessary restrictions (and penalties) in cases of excessive, unregulated and ineffective use of SIDs, primarily through budgetary measures.

Introducing Ex Post Control Mechanisms

The most efforts should be dedicated to improving the ex post control. At present, the law does not stipulate any such measures. Given that the court has the power to issue permits for SIDs, the court should also be in charge of controlling their use. Further clarifications are needed with respect to the regulations on the process of storing and destroying information, as well as the specific sanctions and liabilities in case of abuse. In order to prevent the use of information acquired through SIDs for political or other unlawful purposes, the number of people with access to it should be restricted. The practices of transmitting such information up to the highest levels within the Ministry of Interior and the State Agency for National Security should be terminated. The information should be accessible and available only to the investigation teams and used only for the purposes of the investigation.

Ensuring the effective control of the court over the use of SIDs and the information acquired through SIDs, as well as improving the public control of the sector through a parliamentary subcommittee overseeing the legality of the employment of SIDs will reduce significantly the possibilities for abuse at all levels.