



**REPUBLIC OF SERBIA
PROTECTOR OF CITIZENS**

614-506/14
Belgrade



Заштитник грађана
Zaštitnik građana

Ref.No.25507 date: 03/09/2014

**REPORT ON OVERSIGHT OF THE SECURITY INFORMATION
AGENCY REGARDING THE USE OF COVERT SURVEILLANCE**

SUMMARY

When conducting the covert search, the Security Information Agency (SIA) respects the constitutional right of the inviolability of the home.

SIA conducts the covert search as stipulated by bylaws of the Agency and upon the decision of the director. The covert search has to be regulated by the law and conducted only upon decision of the court or other body, independent from the SIA. The knowledge of the SIA members, as well as the internal control, have to be improved, so as not to exceed the existing decision during the covert search. It is necessary to revise and to improve the interpretation of the term "xxxxxxxxxx xxxxxxxxx" in the work of SIA, in accordance with the constitutional guarantees of human rights and the values of democratic society. It is necessary to improve procedures and IT programs in order to reduce the possibility of abuse and the occurrence of mistakes during the administrative processing of documents.

The fulfilling of legal obligations of SIA (allowing access to premises and data, talks with the management and the members) as well as the overall cooperation with the Protector of Citizens during oversight have been implemented in accordance with the best European experiences in this field.

INTRODUCTION

After publicly announced information that the SIA has conducted the covert search measures in a larger number of cases, the Protector of Citizens has decided to initiate oversight of the SIA regarding the legality and regularity of the use of such measures. The following measures have been considered during decision-making:

- The content of the measure of “covert search”, which allows a significant violation of rights arising from the right to a private life¹,
- The fact that the measure of “covert search” is neither expressly stipulated by the Law, nor are the conditions for its implementation, the processing and the use of results regulated by the Law, but rather bylaws with the high security level, which jeopardizes the principle of legality of work and increases the danger of irregular implementation of regulations and civil rights violations.

PROCEEDING

The oversight proceeding begun with the letter of the Protector of Citizens No 614-506/14 from 27 March 2014 in which the SIA was informed about the initiation of the oversight procedure, as well as the subject and the goals thereof, according to Article 29 paragraph 1 of the Law on the Protector of Citizens.

On 16 April 2014, the Protector of Citizens held a preparatory meeting with the director of the SIA, during which the planned course of the action was presented.

On 22 April 2014, the Protector of Citizens sent a letter to the director of SIA, in which he precisely defined, for the purpose of efficacy, the type of data and information which the Agency is required to submit in order to achieve the goals of the oversight procedure.

On 12 May 2014, in the premises of the SIA, the Protector of Citizens inspected the work of its Registry Office in which the cases with documents designated as confidential are being administratively processed. Within the oversight procedure, the Protector of Citizens talked to the SIA's IT manager.

At the SIA Registry Office, the Protector of Citizens accessed the information on all procedures in which, over the period of one year prior to the oversight, the SIA had conducted the covert search or for which the warrant had been granted. Of all the procedures, the Protector of Citizens chose a representative sample of nine cases, using the following criteria: time of the application of the measure, place of the application, type of illegal action which was stated in the proposal for application of the measure as the grounds for which the application of this measure was requested, as well as the citizenship of persons subjected to search, in an attempt to include as many different cases as possible.

Immediately after that, nine selected cases were moved to a separate room, with complete documentation, where the Protector of Citizens gained insight in the content thereof, in order to control the legality and regularity of the Agency's procedures during the covert search. During the inspection of the documentation, four SIA representatives provided additional information and explanations. In every single case the following issues were considered: proposal for

¹ Article 8. of the European Convention on Protection on Human Rights and Basic Freedoms (“Official Gazette of SCG (Serbia and Montenegro) - International Treaties”, No 9/2003, 5/2005 and 7/2005; „Official Gazette of the Republic of Serbia - International Treaties“, No.12/2010)

conducting the covert search, the decision on granting the covert search and the report on the measures conducted (after the conduction thereof), and in individual cases, in which beside the covert search other covert measures and procedures were performed, the documents on the application of those measures and procedures were inspected.

On 27 August 2014, the Protector of Citizens submitted to the SIA a draft report for comments, in order to correct possible factual inaccuracies and to point to possible parts of the Draft report that should be left out because they contain data or circumstances which, according to law, cannot be made available to public.

On 29 August 2014, the director of the SIA informed the Protector of Citizens that, in his opinion, the Draft did not contain factual errors, or such parts, that should be deleted on the grounds of the protection of classified information and application of the principle of conspiracy in the work of the Agency, except for the parts which the Protector of Citizens, according to the law, deletes, so as not to jeopardize the realization of the procedures in course.

On 3 September 2014, the final text of the Report was prepared and submitted to SIA, as well as the restrictive version of the Report, which was submitted to the National Assembly and made publicly available.

FINDINGS

1. Complying with the constitutional right of inviolability of the home

SIA statement: The director and the authorized representatives of the SIA told the Protector of Citizens on several occasions that the covert search was never conducted in homes (houses, apartments), or spaces that can be considered as home, since this would represent the violation of constitutional rights of inviolability of the home², in which case the procedure according to constitutional right of inviolability of the home has to be initiated, i.e. the court decisions has to be acquired and the presence of two witnesses provided, which would then represent the measure of search, but not the measure of covert search.

Established facts: During the inspection, after having gained a detail insight in the representative number of cases, not a single case was found in which the SIA had conducted the covert search in an apartment, i.e. home.

Conclusion:

When conducting the covert search, the SIA respects the constitutional right of the inviolability of the home.

2. Legality and regularity of the covert search

Regulations: The Law on the SIA does not specifically regulate the application of the measure of the covert search, but it is rather regulated with internal acts of the Agency, which are marked confidential and are not available to the public. After the inspection of the internal acts regulating (also) the procedure of the covert search, it was established that they especially regulated the proposal for, the conduction of and the reporting on the application

² The Constitution of the Republic of Serbia, article 40.

