

TELECOMMUNICATION SURVEILLANCE IN BOSNIA AND HERZEGOVINA

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Executive Summary:

The constitutional construction of Bosnia and Herzegovina created multiple police agencies and four judicial systems, which means that fifteen police agencies and the Intelligence-Security Agency of BiH could file a demand for telecommunication surveillance from 68 different courts. Even though the legal framework has been equalized, this complexity together with parliamentary oversight on multiple levels opens up penetration points for the misuse of telecommunication surveillance. In order to prevent eventual misuse, this paper recommends to decrease the number of courts that can issue warrants, create a coordination system for telecommunication surveillance between the police agencies and define guidelines for parliamentary oversight.

BACKGROUND

A country with a complex political system has an equally complex police and judicial system. Bosnia and Herzegovina has four judicial systems and fifteen police agencies; and since 2004, there is also one Intelligence-Security Agency (replacing two agencies, the Federal Intelligence Agency - FOSS and the Intelligence and Security Service of Republika Srpska). A big advance was made in 2003, when the Criminal Procedure Codes were harmonised. Only minor differences between the governance levels remain when it comes

to the application and specification of suspected criminal offences in order to apply certain special investigative measures.

These changes specified which information needs to be included in both the demand and the warrant. The law also specifies that the person against whom special investigative measures have been applied needs to be informed of such actions after the end of the investigation by the court that issued the warrant.

IDENTIFIED PROBLEMS

The Law on the Intelligence-Security Agency of BiH (ISA) and the Criminal Procedure Codes specify which courts can issue warrants upon the demand of the ISA or the police agencies. In total, up to 68 different courts (ranging from municipal and basic courts to the state court) can issue warrants for special investigative measures (including telecommunication surveillance), depending on the agency requesting such measures. Only in the case of the Law on the Intelligence-Security Agency is it specified that the President of the Court of BiH (or a judge of the Court of BiH appointed by the President of the Court of BiH) can issue the warrant, whereas in the Criminal Procedure Codes it is stated that the warrant is to be issued by the preliminary proceedings judge. This allows for a large number of judges to determine whether there is a need for special investigative measures, creating a bigger risk of abusing such measures and violating human rights.

The substantial number of different police agencies opens up the possibility that the same person can be subject to telecommunication surveillance by multiple agencies either at the same time or successively. The issue raised here is that even though the Criminal Procedure Codes specifically state that the warrant for telecommunication surveillance can

be issued for a maximum duration of one month, with the possibility of being reissued for up to six months, there is no mechanism that would prohibit multiple police agencies to successively conduct surveillance on the same person, resulting in a possible surveillance longer than the legal limit of six months.

The political system of Bosnia and Herzegovina provides one state, two entity, ten cantonal and one Brčko District parliament, in total fourteen parliaments. Each of them has at least one police agency in its jurisdiction. This means that every parliament has (or should have) some mechanism of parliamentary oversight of the work of the police agency in their jurisdiction. The Joint Committee on the Supervision of the work of the Intelligence and Security Agency of BiH of the state Parliamentary Assembly has the jurisdiction to supervise the lawfulness of the Agency's work; the other state police agencies are supervised by the Joint Committee on Defence and Security of Bosnia and Herzegovina. The lower levels have different committees, within whose jurisdiction it is to supervise the police agencies. However there are no common guidelines on how they should supervise the use of telecommunication surveillance, as one of the special investigative measures.

RECOMMENDATIONS

In order to ensure that the risk of abuse of telecommunication surveillance and violation of human rights is at the lowest possible level, **the first recommendation** would be to exclude the municipal and basic courts from issuing warrants. This means that the number of courts which

can issue warrants would drop from 68 to 17. The risk that the courts will be overburdened by the work is low, as the Criminal Procedure Codes state that the warrant is issued by the preliminary proceedings judge. Another option for lowering the number of courts that can

issue warrants would be to limit the authorized persons by naming the president of the court (or a judge of the court appointed by the president of the court), as defined in the Law on the Intelligence-Security Agency. In both options the number of judges that can issue the warrant will be diminished, allowing more qualitative trainings of these judges on this topic to be conducted and for the possibility of a common practice in all the courts in BiH being introduced.

In May 2007, the Council of Ministers passed the Decision on the composition of the Joint Steering Committee for the legal interception of telecommunications and the manner of execution of activities. This Decision ensures proper implementation and administration of requests related to interception of telecommunications and data communications, through the “System for legal interception of telecommunications” defined as a state system established to harmonize execution of orders for legal interception of telecommunications, which is under the jurisdiction of state bodies and can access all authorized agencies as users of the system. This can also be understood as a coordination system for telecommunication

surveillance on the state level, as the harmonization allows control that no violations of the length of surveillance occur. Thus, **the second recommendation** would be to create a coordination system for all police agencies. There are two options available, one is that the telecom operators must notify either the court or the police agency that the surveillance of telecommunications of a person is already in progress, or that a special body is created that will oversee all the telecommunication surveillance warrants and ensure that there is no breach of the legal provisions concerning the length of surveillance and no violations of human rights.

The third recommendation is to define guidelines for parliamentary oversight of the work of police agencies concerning telecommunication surveillance, and the use of special investigative measures in general. In addition it would be beneficial to include one or two experts in the work of these commissions as advisors to the MPs. This will ensure that all parliaments will follow the same rules, and in turn harmonize the work of the police agencies concerning the use of special investigative measures, and in doing so, prevent violations of human rights.

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