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Meeting: 1288th meeting (June 2017) (DH)

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Communication from Bulgaria concerning the case of ASSOCIATION FOR EUROPEAN INTEGRATION AND HUMAN RIGHTS & EKIMDZHIEV v. Bulgaria (Application No. 62540/00)

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Référence du point : Plan d'action

Communication de la Bulgarie concernant l'affaire ASSOCIATION FOR EUROPEAN INTEGRATION AND HUMAN RIGHTS & EKIMDZHIEV c. Bulgarie (Requête n° 62540/00) ***(anglais uniquement)***

ACTION PLAN

Ekimdzhiev group of cases

March 2017

The judgments in this group are:

Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria, no. 62540/00, judgment of 28 June 2007, final on 30 January 2008;

Georgi Yordanov v. Bulgaria, no. 21480/03, judgment of 24 September 2009, final on 24 December 2009;

Hadzhiev v. Bulgaria, no. 22373/04, judgment of 23 October 2012, final on 18 March 2013;

Natsev v. Bulgaria, no. 27079/04, judgment of 16 October 2012, final on 16 January 2013;

Kirov v. Bulgaria, no. 5182/02, judgment of 22 May 2008, final on 22 August 2008;

Goranova-Karaeneva v. Bulgaria, no. 12739/05, judgment 8 March 2011, final on 8 June 2011 08/06/2011;

Savovi v. Bulgaria, no. 7222/05, judgment of 27 November 2012, final on 27 February 2013.

I. SUMMARY OF THE FINDINGS

The judgments in this group concern the lack of sufficient safeguards in the Bulgarian law against the risk of abuse which is inherent in every secret surveillance system (violation of Article 8). In the case of *Association for European Integration and Human Rights and Ekimdzhiev,* the applicants did not allege that special means of surveillance had been used against them, but the European Court of Human Rights (hereafter "the Court") found that the very existence of deficient legislation violated their rights. In this case the Court also found that the system of secret surveillance in Bulgaria seemed to be overused and considered that this excessive use may in part be due to the inadequate safeguards which the law provided. In three

other cases, the applicants had been subjected to secret surveillance measures in the context of criminal proceedings against them. In two of these cases, the Court found violations of Article 8 due to the manner in which the domestic legislation had been applied to the applicants in 1998 and 2000.

In addition, in six of the cases in this group, the Court found that the applicants had not had at their disposal an effective remedy to seek redress from use of special surveillance (violation of Article 13).

II. INDIVIDUAL MEASURES

In the cases of *Association for European Integration and Human Rights and Ekimdzhiev*, *Goranova-Karaeneva,* and *Hadzhiev* the Government have paid the awarded costs and expenses. No other individual measures seem necessary. In the case of *Kirov*, no individual measures are necessary as the Court did not award any just satisfaction and the documents and records obtained through secret surveillance have been destroyed.

In the case of *Natsev*, the Court awarded costs and expenses in the amount of EUR 70. The applicant has been continuously refusing to obtain payment of this amount. When the judgment became final, the Agents' Office sent an email to the applicant requesting his bank account. The applicant responded that the amount was too low, more of a mockery rather than real compensation for all his suffering. He refused to obtain payment, stating that he could not accept this compensation and underlined, in a somewhat sarcastic manner, that the amount should be transferred to his representative or to the Court.

In the cases of *Georgi Yordanov* and *Savovi,* an inquiry will be sent in order to confirm whether the obtained material as a result of the used secret surveillance against the applicants has been duly destroyed.

The Committee of Ministers will be informed on the outstanding issues.

III. PROBLEMS IDENTIFIED BY THE COURT

The main piece of legislation in the area of secret surveillance is the 1997 Special Surveillance Means Act (hereafter "the 1997 Act") which governs the secret surveillance measures aimed at preventing and investigating criminal offences or protecting national security.

Some provisions are also contained in the 2005 Code of Criminal Procedure ("the 2005 Code") and in the 1988 State and Municipality Responsibility for Damage Act ("the 1988 Act").

The main shortcomings of the Bulgarian legal framework identified by the Court in the cases examined in this group are: a) the lack of possibility to review the implementation of secret surveillance measures by an external and independent body; b) the lack of regulation specifying how the information collected should be processed, preserved and destroyed; c) the lack of sufficient safeguards in respect of surveillance carried out on national security grounds; d) the fact that the overall control over the system of secret surveillance was entrusted solely to the Ministry of the Interior; e) the lack of independent control over intelligence obtained which falls outside the scope of the original application for the use of special surveillance means; f) the fact that a person subjected to secret surveillance is not notified of that fact at any moment, except in cases in which he or she is prosecuted in the context of criminal proceedings on the basis of information obtained through secret surveillance; and g) the absence of an effective remedy to complain about the use of secret surveillance measures.

The action plan provides the steps already taken and the necessary further measures in order to tackle the problems identified by the Court.

IV. JUDICIAL REVIEW OF THE IMPLEMENTATION OF SECRET SURVEILLANCE MEANS

The Court has identified as problematic the lack of review of the implementation of secret surveillance measures by an external and independent body.

At present, there are several types of judicial authorisation of the use of secret surveillance: judicial authorisation of secret surveillance related to serious offences, judicial authorisation of secret surveillance related to the protection of national security, judicial authorisation of secret surveillance related to terrorist threat. In addition to that, information is provided as to when secret surveillance may be used in case of urgency and the information and documents sent to the courts after the end of the surveillance.

Applications for the use of special surveillance means can be made only by the heads of certain departments of the Ministry of Interior, of the National Security Agency and of the Ministry of Defence, as well as by the State Intelligence Agency. The prosecutor who supervises

a preliminary investigation can also make a request for the use of special surveillance means within the context of the investigation (section 13 of the 1997 Act). Such applications may be also made by the heads of certain public prosecutor's offices when the secret surveillance is to be used against judges, prosecutors or investigators, as well as the Regional Public Prosecutor's Offices when the requests concern election offences. In respect of surveillance related to terrorist activities, the Chief Public Prosecutor can also make such an application.

1. Judicial authorisation of the use of secret surveillance related to serious offences

The 1997 Act provides for the use of special surveillance means to investigate or to prevent serious criminal offences. Such measures can be employed in respect of persons who are suspected of planning, committing, or having committed serious offences, or persons who are being manipulated for such purposes; premises which should allow the identification of the above persons; witnesses in criminal proceedings who have given their consent for surveillance for the establishment of criminal activity of third persons; persons who have agreed to the surveillance in writing for protection of their lives and property (section 12).

Only an exhaustive number of offences can be grounds for use of secret surveillance (section 3)[1]. The 1997 Act provides for the use of surveillance measures only as a last resort, when the data cannot be collected otherwise or their collection would entail exceptional difficulties. The use of secret surveillance during criminal investigations is regulated by the 2005 Code of Criminal Procedure and the relevant provisions are similar to those of the 1997 Act.

There exist different time-limits for the use of special surveillance means according to the objective of the surveillance[2]. In cases concerning serious criminal offences in general, the time-limit is two months; it can be extended up to 6 months by a judge following the same procedure as the one applicable for the initial authorisation (section 21 of the 1997 Act). As concerns premises which are subject to surveillance in order to identify authors of criminal offences or persons unwittingly manipulated for such purposes, the time-limit is 20 days and can be extended by subsequent judicial decisions for up to 60 days.

The application for the use of secret surveillance means must be well-reasoned and must contain a full and comprehensive description of the facts and circumstances founding the

[1] Before 2013, any serious offence (i.e. punishable by more than five years' imprisonment) could trigger up the use of special surveillance means.
[2] Introduced with amendments in 2013 and 2015,

suspicion that a serious offence has been or could be committed and which make it necessary to use special means. It should also contain a full description of the steps which have already been undertaken and the results of the preliminary investigations or the preliminary inquiries. The applications should also mention data allowing the identification of the persons or objects concerned by the special means which will be used, the period of implementation of the surveillance measures, the methods to be used and the name of the official to be informed of the results obtained (section 14). Further, reasons must be given to justify the duration for which the use of the secret surveillance means is sought, as well as to state reasons for the inability to collect the information otherwise or for the exceptional difficulties related to its collection. The requesting authority is duty-bound to provide the judge with all the materials related to the application.[3]

The application for the use of special surveillance means should be submitted to the presidents of the regional courts, of the Sofia City Court, of the military courts, of the appellate courts or of the Specialised Criminal Court. The judge should give reasons for his or her decision. The judge has 72 hours to decide on the request[4].

The National Bureau for Control of Special Surveillance Means (hereafter referred to as "the National Bureau"), which is an independent body monitoring the secret surveillance system in Bulgaria, pointed out in its report of 2015 that the judicial control in 2015 had considerably improved and had been performed diligently. It reported a significant increase in the number of judicial refusals, including partial refusals, amply reasoned. According to information published on the website of the National Bureau, the tendency of diligent judicial control over the surveillance requests continued also in 2016.

2. Judicial authorisation of the use of secret surveillance for the protection of the national security

The 1997 Act provides for the use of special surveillance means in the context of national security. At present, most of the provisions governing the judicial authorisation of secret surveillance in respect of serious criminal offences also apply to applications for the use of secret surveillance to protect national security. The main difference is that there is no specific definition

[3] Some of these requirements were introduced in 2013 and 2015.
[4] This time-limit was introduced in June 2015; before 2013, the law required the judge to give an answer to an application for use of secret surveillance "immediately".

of "persons or objects/places related to national security" in respect of which it is possible to use secret surveillance. According to information provided by the National Bureau in a letter of 23 February 2017 addressed to the Ministry of Justice, the notion of "persons or objects related to national security" is interpreted narrowly as concerning persons and objects for whom/ which there is information that they represent a threat or risk to national security by planning, committing or having committed a serious offence among those listed in the 1997 Act.

As a general rule, the time-limit for the use of secret surveillance to protect national security is two months (unless the secret surveillance concerns offences mentioned in Chapter 1 of the Special Part of the Criminal Code for which different time-limit applies). It can be extended up to 6 months by a judge.

As concerns serious offences such as treason, betrayal, espionage, diversion the time-limit for the use of secret surveillance is 2 years (section 21). It can be extended to up to 3 years[5].

3. Judicial authorisation of the use of secret surveillance in case of a threat of terrorism

In December 2016 special provisions related to terrorist activities and their surveillance were introduced (offences of terrorism under Chapter 1 of the Special Part of the Criminal Code as well as incitement to terrorism and forging documents in relation to a terrorist activity). The application for the use of secret surveillance in this respect still must provide detailed information such as description of the facts and circumstances justifying the use of surveillance; the data allowing the identification of the persons or objects concerned, if such data is available[6]; the period of implementation of the surveillance means; the methods to be used and the name of the official to be informed of the results (section 14(3)). According to information provided by the National Bureau, the use of secret surveillance means in cases of terrorist threats is not subject to the general requirement under section 3 of the 1997 Act for the use of secret surveillance only as a measure of last resort. Certainly, the requirements for the application are not that strict as in the other cases which is justified by the nature of the suspected offences. Also, it appears that the obligation to provide the judge with all the materials related to the request for the use of secret surveillance applies also to offences of terrorism. The National Bureau interprets the respective

[5] This amendment was introduced in 2016; before that only the general time-limit applied to all offences concerning national security.

[6] When the application for surveillance is not accompanied by such data, the National Bureau notes that it is in the judge's power, after having acquainted him/herself with all the materials on which the application is based, to decide whether to grant or refuse the use of secret surveillance.

provisions as imposing a general obligation to provide the judge with all the materials, with no exceptions for the terrorist offences.

The time-limit for the use of secret surveillance related to terrorist criminal offences under Chapter 1 of the Criminal Code is 2 years. It can be extended to up to 3 years with a judicial authorisation. If there is a request to extend the period of application of secret surveillance, the authorities should however provide the judge with all the materials related to results of the already conducted surveillance (section 21).

4. Urgent surveillance measures

In case of an immediate threat to national security or where there is an immediate risk that a serious offence may be committed, the Minister of Interior or the president of the National Security Agency may order the deployment of special means of surveillance without a judicial warrant. In such a situation, the competent judicial authorities must be informed without delay. If the use of secret surveillance means is not approved within 24 hours, it should be discontinued and the judge should decide if the information gathered should be preserved or destroyed (section 18 of the 1997 Act).

5. Information and documents communicated to the judge after the end of the surveillance

The judge who has granted a surveillance warrant examines the implementation of the special surveillance means. The judge should, in all cases, be informed when the use of special means of surveillance has ended (section 22 of the 1997 Act). If pieces of physical evidence have been established following the use of secret surveillance, a copy of the minutes and of these pieces of evidence should be sent to the judge who has granted the warrant within 24 hours (section 29 (1) of the 1997 Act). Within one month of the end of the use of special surveillance means, the authority which has requested the use of such means should present a report to the judge who has granted the judicial authorisation. The report should contain information about the type and duration of the use of the secret surveillance means, whether pieces of physical evidence have been established and whether the information gathered has been destroyed. According to information provided by the National Bureau, any previously identified shortcomings with the

procedure on reporting to the judge of the measures of implementation of the surveillance have not been subsequently observed at its later inspections.

Conclusions and measures to be taken: as concerns the use of special surveillance means for the prevention or investigation of serious criminal offences, the Court has found that the authorisation procedure under Bulgarian law concerning surveillance for the prevention or investigation of serious criminal offences provides sufficient safeguards. Having that in mind and the well-functioning judicial review, it seems that the rules governing the use of secret surveillance in this situation provide sufficient safeguards against abuse. Moreover, the judges have 72 hours to take a decision upon the request for use of surveillance, which is sufficient time for the judge to study the request and carry out an in-depth control over its justification in the individual case. This is of a particular importance for the high-volume courts that examine a great number of requests per year. Also, the requirements for obtaining judicial authorisation of secret surveillance related to national security are now very similar to those concerning secret surveillance related to criminal offences. Finally, the legal framework concerning the control over the implementation of surveillance measures has been considerably improved.

V. PROCESSING, CONSERVATION AND DESTRUCTION OF MATERIALS AND DATA

1. General rules

The use of special surveillance means may lead to the production of three types of documenting material – documenting material containing the initial data (hereafter "initial data carrier"), documenting material containing the results of the surveillance, and a piece of physical evidence accompanied by minutes.

The content of the initial data obtained following the use of special surveillance means should be recorded on a documenting material (section 24 of the 1997 Act).

The results of the use of special surveillance means should be reflected on paper or on other type of documenting material after they have been obtained by the service in charge of the implementation of the surveillance. The information recorded on this second documenting material should correspond to the information recorded on the documenting material which

contains the initial data (section 25 of the 1997 Act). The documenting material which reflects the results of the surveillance, as well as the items obtained in the context of the surveillance, should be sent immediately to the authority which has requested the surveillance, possibly along with photographs, recordings, etc. (section 25 of the 1997 Act).

The specialised service which has used the special means of surveillance should prepare a piece of physical evidence, if the body which has initiated the surveillance has made such a request in this respect within 10 days after the end of the surveillance measures (section 27 (1) and (2)). The pieces of physical evidence obtained through special surveillance means are prepared in two (or several) copies by the specialised service and have to be accompanied by minutes which comply with the requirements of the Code of Criminal Procedure. One copy should be sent to the judge who has authorised the surveillance, the other copies should be sent to the body which has requested the surveillance (section 29 (1)).

The number of permissions about using the special intelligence means and the prepared physical evidence granted are to be included in the annual reports of the chairpersons of the district and appellate courts and the chairperson of the Supreme Court of Cassation.

With an amendment of 2015, a possibility has been envisaged for the service in charge of the implementation of the surveillance to provide access through an automated information network to the data obtained through surveillance. The access is provided on the condition that the requesting authority so demanded and if there is a technical possibility for that (section 25 (2) of the 1997 Act). This is the so-called technique "accounts".

As regards, the rules concerning the examination and filtering of information, further information will be gathered and provided to the Committee of Ministers.

In respect of the protection and use of special surveillance the following is to be noted.

The 1997 Act provides that, during the period when the surveillance is used, the original data-carrier should be kept by the specialised services which have applied the special surveillance means (section 25 (5) of the 1997 Act). At the trial stage, these documenting materials are kept by the courts. The physical pieces of evidence are kept by the bodies which have requested the surveillance until the opening of the preliminary investigation. Once a preliminary investigation has been opened, the pieces of evidence are kept by the judicial authorities (section 31 (1) and (2) of the 1997 Act).

Moreover, the procedures for preservation of the confidentiality of information obtained through special surveillance means are governed by the 2002 Protection of Classified Information Act (hereafter "the 2002 Act"). The 2002 Act provides standard safeguards for preservation of confidential information, such as security clearance of staff, "need to know" principle and obligation to apply different mechanisms for protection (soft-ware based, material, etc.). According to information provided by the National Bureau, the information concerning the use of secret surveillance means is treated as State secret and is thus protected in accordance with the 2002 Act and the regulations adopted for its implementation.

As to the protection of personal data obtained in the course of the use of secret surveillance means, several pieces of legislation are applicable and contain relevant provisions, such as the Personal Data Protection Act, the 2002 Act, the Code of Criminal Procedure, the 1997 Act, as well as several pieces of secondary legislation concerning the protection of classified information.

As regards the destruction of the material, the following is to be pointed out. If the preparation of a piece of evidence has not been requested within 10 days after the end of the period of use of special surveillance means, the specialised service which has applied the surveillance and the bodies which have requested the surveillance must destroy the documenting material containing the initial data and the material containing the results of the surveillance. The data should be destroyed by a commission of three members which belong to the above-mentioned services or bodies and this should be reflected in minutes (section 31 (3) and (4) of the 1997 Act).

Also, the specialised service which has performed the surveillance has to send to the body which has requested the surveillance the minutes which confirm the destruction of the intelligence obtained, as well as the application for the use of special surveillance means and the judicial warrant. The body which has requested the surveillance should preserve these three documents (section 31 (5) of the 1997 Act).

2. Processing, conservation and destruction of intelligence relating to the national security

In 2015 the procedure in respect of the preservation and destruction of information relating to the national security has been improved. According to section 31 (6) of the 1997 Act,

the materials documenting the results of a given surveillance which has been allowed on national security grounds and relates to offences under Chapter 1 of the Special Part of the Criminal Code should be preserved by the National Security Agency, by the Ministry of Defense or the State Intelligence Agency for a period of 15 years. The 15-year time-limit starts to run at the moment the secret surveillance ceases to be applied. After the expiry of the time-limit for conservation, the data should be destroyed by a commission of three members appointed by the head of the above-mentioned services or bodies and this should be reflected in minutes (section 31 (6) and (7) of the 1997 Act). According to information provided by the National Bureau, in the context of surveillance on national security grounds, the preservation of intelligence is subject to preparation of evidence; the general rules for preparation of physical pieces of evidence are strictly adhered to.

Conclusions and measures to be taken: the Government will gather and provide further information regarding the examination of the information of the intelligence obtained through secret surveillance as well as more information on the applicable regulations on the protection of the confidentiality of information and the destruction of materials obtained through secret surveillance.

In terms of handling intelligence relating to the national security, in 2015 the domestic law has been made more precise as concerns the destruction of intelligence gathered on national security grounds, when this intelligence relates to offences under Chapter 1 of the Special Part of the Criminal Code. These provisions seem to provide adequate safeguards against possible risks of abuse in these specific circumstances.

The Committee of Minister will be duly informed of the outstanding issues.

VI. EXTERNAL AND INDEPENDENT CONTROL ON THE SYSTEM OF SECRET SURVEILLANCE

The Court has identified as problematic the fact that the overall control over the system of secret surveillance was entrusted solely to the Ministry of Interior and not to an independent and external body. Since 2013 the control on the overall operation of the secret surveillance system has been entrusted to the National Bureau for Control of Special Surveillance Means ("the

National Bureau"), an independent body accountable to Parliament. The National Bureau oversees the procedures for authorisation, use and implementation of special surveillance means, preservation and destruction of information obtained through intelligence, and protection of individual rights against abuses in that respect. It can inspect documents and premises where respective information is kept or destroyed, request information from the relevant authorities, give mandatory instructions, inform individuals, under certain conditions, that unlawful surveillance measures had been applied in respect of them.

The National Bureau puts together annual reports to Parliament, summarising the findings made during its inspections, as well as its recommendations for the improvement of the operation of the secret surveillance system. The National Bureau has already published two annual reports for 2014 and 2015.

In addition to that body, a parliamentary committee - "Committee for Oversight of the Security Services, the Deployment of Special Surveillance Techniques and the Access of Data under the Electronic Communications Act" (hereinafter referred to as "Parliamentary Committee") attached to the latest Parliament – has also been vested with functions regarding monitoring of secret surveillance.

Conclusions and measures to be taken: the setting up of an independent body to monitor the system of secret surveillance is a major and important development in providing safeguards for individual rights. It also responds to the shortcomings identified in the Court's case-law. The introduction of a common database for applications for the use of secret surveillance means is also under consideration.

The Committee of Ministers will be duly informed.

VII. INDEPENDENT CONTROL OVER THE USE OF INTELLIGENCE OBTAINED FALLING OUTSIDE THE SCOPE OF AUTHORISATION ISSUED BY THE COURTS

In its judgment *Association for European Integration and Human Rights and Ekimdzhiev*, the Court noted the lack of independent control over the use of material falling outside the scope of the original application for the use of covert surveillance measures.

In 2013 the law was amended and currently provides for an obligation, and not a discretionary power, on the part of the Presidents of the Technical Operations State Agency or of the National Security Agency to notify within 24 hours the requesting authority, if results falling outside the scope of the original application for surveillance have been obtained. The requesting authority, on its part, is under the obligation to notify the competent authority about those results within 24 hours of the receipt of the above notification. If the results concern the official which has made the request for secret surveillance or his/her superior, the Presidents of the Technical Operations State Agency or of the National Security Agency or the Minister of Internal Affairs or their authorised deputies should send the materials immediately to the Chief Public Prosecutor or his/her specifically authorised deputy (section 30 of the 1997 Act).

As concerns the independent control over the use of material falling outside the scope of the original application for the use of covert surveillance measures, such an independent control is now possible, exercised by the National Bureau.

According to information provided by the National Bureau, Article 177 of the Code of Criminal Procedure is applicable in situations where the results obtained fall outside the scope of the original application for surveillance. In particular, paragraph 2 of that provision permits the use in criminal proceedings of a material falling outside the scope of the original application for surveillance, insofar as that material concerns other serious criminal offences listed in Article 172 (2). Similarly, paragraph 3 provides for the possibility, in order to investigate a serious criminal offence among those listed in Article 172(2), to use a material obtained through surveillance in the course of other criminal proceedings. It appears, therefore, permissible to use a material falling outside the scope of the original application for covert surveillance as long as the material is used in criminal proceedings concerning other serious offences from the list of offences for which secret surveillance is permissible.

Conclusions and measures to be taken: pursuant to the relevant domestic rules, the competent authorities cannot decide anymore discretionarily whether or not to inform the requesting authority about the results of the surveillance falling outside the scope of the original application for the use of covert surveillance measures. The requesting authority is also under an obligation to inform the competent authority about the results.

It appears that no further measures in this respect are necessary.

VIII. NOTIFICATION OF PERSONS WHO HAVE BEEN UNLAWFULLY SUBJECTED TO THE USE OF SECRET SURVEILLANCE MEANS AND COMPENSATORY REMEDY

1. Notification of persons who have been unlawfully subjected to secret surveillance

The 1997 Act provides that in case secret surveillance has been unlawfully used, the National Bureau informs the person concerned of its own motion about it (section 34ж). Such a notification should not be sent if it could jeopardise the efforts to protect national security or prevent or investigate serious criminal offences, or if there is a risk that the operational methods would be revealed or if it could cause a risk to the life or the health of an undercover agent or members of his or her family.

It is the National Bureau which makes the assessment as to the legality of the use of surveillance and as to the grounds for exclusion of the notification of the persons concerned. According to information provided by the National Bureau on the interpretation of the notion of "unlawfulness" of the use of secret surveillance means, the following violations of the law lead to a conclusion of unlawfulness: (a) a request for surveillance made by a body which is not competent to do so; (b) a judicial warrant given by a court that is not authorised to do so; (c) use of secret surveillance means for investigation of criminal offences that are not among those for which surveillance could be used; (d) use of secret surveillance beyond the statutory time-limits; (e) lack of data in the request for use of secret surveillance means pointing at an offence committed by the person concerned.

The National Bureau has adopted in 2016 internal rules for its work on signals about unlawful use of secret surveillance means. The rules provide for a 2-month time-limit for examination of the signals. In case the National Bureau concludes that there has been unlawful use of secret surveillance, it notifies the individual concerned and the respective authorities. If the use has been lawful or no surveillance has at all been employed, the individual is notified that no unlawful secret surveillance means have been used against him/her.

In its annual reports, the National Bureau indicated that it has examined all signals received from citizens and has adopted decisions relating to the inquiry into their well-foundedness.

2. Domestic compensatory remedy

Section 2 (1) (7) of the 1988 State and Municipalities Responsibility for Damages Act provides that the State is liable for damage which the investigating and prosecuting authorities or the courts have caused to individuals through the unlawful use of special surveillance means[7]. In accordance with the case-law of the domestic courts, that remedy cannot be applied retrospectively. The persons who wish to use the remedy do not necessarily need to be previously informed by the National Bureau that they have been subject to secret surveillance.

In the past few years at least three judgments have been delivered awarding compensation to individuals for unlawful use of secret surveillance, two of them delivered in 2016 and one in 2017, two by a first-instance court and one on appeal[8]. The action for compensation in the first judgment is based on a notification made by the National Bureau to the claimant informing him about the unlawful use of special surveillance means in respect of him in the course of criminal investigation. In the second judgment the court awarded compensation accepting that if the criminal proceedings have been unlawfully brought against the claimant, then compensation is also owed for the secret surveillance means used in the course of those proceedings. In the third judgment the court awarded compensation on the basis of a notification of the National Bureau to the claimants informing them about the unlawful use of special surveillance means in respect of them. By contrast, in another judgment of November 2016 (not yet final), a first-instance court dismissed a claim for damages based on a notification made by the National Bureau to the claimant informing him about unlawful use of secret surveillance. The court held, inter alia, that it was not bound by the National Bureau's conclusions and that State liability could be engaged only in respect of irregularities committed at the subsequent, implementation phase of the use of secret surveillance and not at the initial phase of applying for and granting judicial authorisation of such use.

In an interpretative decision of June 2015, the Supreme Court of Cassation excluded the possibility to bring proceedings under Section 2 (1) (7) of the 1988 Act for compensation for unlawful use of secret surveillance against courts as defendants. The Supreme Court of Cassation noted that compensation in full should be nevertheless awarded even if only one authority is defendant in such proceedings. Applying that interpretative decision, the courts have partially

[7] This remedy was introduced in March 2009.
[8] There is no information if the judgments have become final yet.

terminated several proceedings for compensation for unlawful use of surveillance brought against courts and other authorities as defendants and those proceedings are now pending in respect of the other defendants.

Conclusions and measures to be taken: more information will be provided on the notification procedure as well as on the functioning of the domestic compensatory remedy and in particular on the investigative powers of the domestic courts to examine actions based on allegations of unlawful secret surveillance, if the allegations are not supported by a notification of the National Bureau.

The Committee of Minsters will be duly informed.

IX. STATISTICAL DATA

In 2015, some 2,638 persons were subjected to secret surveillance measures. By way of comparison, in 2011 the number of persons subjected to surveillance was 8,184, in 2012 that number dropped to 5,902, and in 2013 and 2014 it further dropped to 4,452 and 4,202, respectively.

The National Bureau and the Parliamentary Committee have identified a steady trend of decrease of the persons subjected to secret surveillance over the past 5 years. They have indicated that this decrease could be attributed to the enhanced supervision performed by the heads of the requesting authorities on the preparation of requests for use of secret surveillance means and the improved internal regulations in that respect, as well as to the more diligent judicial control over such requests, especially following the disclosure in 2014 and 2015 of various breaches of the procedure.

The total number of the judicial warrants for the use of special surveillance means in 2015 was 4,034, out of which 3,150 for initial requests for use of secret surveillance and 884 for extension of the time-limits. By way of comparison, in 2014 there were 7,604 judicial warrants, out of which 5,604 concerned initial requests and 2,000 – extension of the time-limits. In 2015 the refusals to grant the requests were 683, whereas in 2014 that number was only 150.

In 2015 the most numerous were the judicial warrants granted by the Specialised Criminal Court - 1,049, the Sofia City Court – 837, and the Plovdiv Regional Court – 461; their refusals were also the most numerous - 200, 240 and 54 respectively.

In 2015 the competent authorities prepared 1,677 pieces of evidence following the use of special surveillance means; this number has increased since 2014 when the prepared pieces of evidence were 1,084.

X. CONCLUSION

The Government took a number of measures for the execution of the Court's judgments in this group. However, it seems necessary that some further information be provided regarding the case-law under the compensatory domestic remedy, the newly introduced rules on application of secret surveillance in cases of terrorist threat and national security, and the procedures for filtering, analysis, protection and destruction of data.

The Committee of Ministers will be kept informed on the outstanding issues and the further developments.