

## **Fundamental rights under pressure**

### **The Rule of Law in Latvia**

It is a common ground that secret surveillance has become a threat to the rule of law in the modern society. In Latvia, however, it has recently posed a threat to the independence of legal profession, which is inevitable since the independence of legal profession is part of any democratic system and a guarantee against arbitrary use of power by the empowered „secret services”.

In any legal system a natural risk of abuse of secret powers does exist. As the European Court of Human rights has stipulated in the classical case of *Malone v. the United Kingdom*, powers exercised in secret entail evident risks of arbitrariness, and therefore the State must take all measures to provide for strong control mechanism to exclude possibility of abuse. Whereas the state fails to provide a sufficient legal ground for controlling the operations of the secret services, it is inherent that the authorities would use the uncontrolled powers in order to benefit from such lack of checks and balances system, sometimes even turning against the representatives of legal profession.

Latvian legal system, generally recognized as compliant to the European democratic values, has a certain „gray zone” with regards to the powers granted to the so-called „State Security Services”. There are in fact four powerful „secret services” of a police nature in a country of two million people.

What is so dangerous about the secret services in Latvia: first of all, lack of proper control, also parliamentary control. This problem is caused by several different aspects of the laws, but the most interesting is that one of these State Security Services is responsible for granting access to information containing state secret. It means that everybody, including the candidate members of National Security Committee of the Parliament, who under the law has a power to execute the Parliamentary control of the State Security Services, have to undergo a secret proceeding before one of the State Security Services they allegedly are entitled to control. Moreover, the only appeal procedure of the decision to deny the right to the state secret provides for appeal only to the Prosecutor General of Latvia. Notwithstanding that this branch of the same executive power is traditionally very closely linked to the police and special services, but the Prosecutor General himself needs an access to the state secret, which is granted to him by the same State Security Service, the body he allegedly supervises. In this context it was not a surprise that the deputy of Latvian Parliament, who has tried to initiate statutory changes in order to define precise terms and conditions of secret surveillance and strengthen judicial control over

the secret measures, has soon been refused an access to the state secret and therefore denied participation in the relevant Committee.

Besides the above practical lack of controls over secret services and the increase of their powers due to close informal mutual cooperation among them, the danger that they pose to the rule of law and the democracy lays in their ability to conduct secret surveillance over indefinite categories of people for virtually indefinite periods of time and in absence of any possibility for this person to even know that he or she has been targeted.

It is allowed in Latvia to conduct secret surveillance of the person outside any criminal proceedings against him or her, even if the basis for such secret surveillance is just an allegation that a person committed or plans to commit a crime. So, instead of initiating a regular criminal investigation on the suspicion of crime, any secret service may order “investigatory operations” depriving the person of any rights and guarantees, inherent for criminal proceedings, for example, not to incriminate oneself, and therefore performing secret surveillance of the person.

Under the law, a person may be under surveillance during the period **up to 15 years**. Despite the fact that the judge authorizes secret measures limiting constitutional rights of persons, such control regime is still insufficient under the ECHR practice to make Latvian law in compliance with the “quality of law” requirement of the European Convention.

Under the “Law on State Secret”, everything connected with investigatory operations is considered state secret, including the content of the information so obtained. The object of the secret surveillance, therefore, has no chance to learn about the fact of the surveillance performed against him or her in the past, and the content of the information gained, may not use it in court for self-defence (most of the judges also do not have access to State secret and cannot verify the information the authorities rely on in accusing a person), and may not effectively challenge the validity of such information.

**Unfortunately, such deficient system has allowed for attacks against lawyers in connection with exercise of a legal profession.**

As an example one can mention the case where one of the Security services, the so-called Corruption Prevention and Combating Bureau (the KNAB), has performed investigatory process against the lawyer, sworn attorney, and wire-tapped the conversation between the lawyer and his client in prison. **The conversation was sent to the police to be used against the lawyer’s client in unrelated criminal proceedings.** Later it was acknowledged that evidence so gained was not admissible in the case of his client. Needless to say that no subsequent criminal or any other proceedings have been initiated against this lawyer, no suspicion of any illicit activities have ever been claimed against him. But until now we are unaware of how many of his

conversations with his clients have been wiretapped. The only thing we learned, by chance, is that the „investigative case” went on for at least 18 months.

In another case, one particular person was targeted for seven years as an object of „investigatory process”. At one point her defence attorneys have been summoned to interrogation about the content of the defence they provide to their clients and later learned that they have been most probably **subjected to wire-tapping and control of correspondence for almost a year**. They are deprived of a possibility to be officially informed on the fact of wire-tapping.

All of these cases, although presented or to be presented to the ECHR, make us feel unsure about the future of independence of legal profession in Latvia. The pressure is growing, and although it is clear that legal profession carries with it not only rights, but also obligations, it is evident that affecting the lawyers for zealous defence of their clients is a threat to the rule of law. The Council of the Bar has undertaken an active position in defending its’ members; we have also informed the society on the situation and intend to achieve full transparency in the cases.