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Prime Minister
Donald Tusk

Over the last few years the question of the abuse of the surveillance methods against journalists returns on a regular basis. Exactly one year ago information about the abuse of surveillance methods by the prosecutor's office in Warsaw and the Internal Security Agency (ABW) in the course of preparatory proceedings (Ap V Ds. 17/09) against Wojciech Sumliński, Bogdan Rymanowski and Cezary Gmyz shocked the media. After this issue has been revealed, the government declared that a wide legislative change will be introduced concerning the methods of classified surveillance (vide Letter BM VI 066 349/99 of 29 October 2009 from the Minister of Justice to the Chairman of the Helsinki Foundation for Human Rights). However till this day no such change did take place.

Helsinki Foundation for Human Rights is deeply concerned by the information revealed in Wojciech Czuchnowski's article entitled "Journalists Targeted by the Intelligence Agencies" (*"Dziennikarze na celowniku służb specjalnych"*) published in the Gazeta Wyborcza daily on October 8 2010. This article speaks of the classified preparatory proceeding (V Ds. 68/09/sw) which is being conducted by the district prosecutor's office in Zielona Góra concerning the fact of committing crime referred to in article 231 of the Polish penal code (*"przekroczenie uprawnień"*). The range of charges against police, ABW as well as the Central Anticorruption Office (CBA) formulated in the above mentioned article forces us to raise the question whether there exist any efficient instruments of control over the operational control and surveillance conducted by police and intelligence services.

Wojciech Czuchnowski who in the the preparatory proceedings claims the status of a victim, has been given access to only some of the documents. Access to the remaining information has been denied since they are protected under the law of 22 January 1999 on the protection of classified information. Even the decision of 25 Mai 2010 on the discontinuance of the proceedings was withheld and Czuchnowski who filled a complaint against it, did not know its content.

Based on the information from the article, ABW, CBA as well as Police regularly carried out surveillance of well known journalists in order to reveal their sources of information. This was done through retrieving information from telephone billings and list of calls to base transceiver station (BTS). Moreover, reveled data shows that the agencies were not collecting these information in order to fulfill functions ascribed to them such as preventing and combating serious crime that threaten vital interest of the state.

What is particularly outrageous is the fact that the usage of these measures is not subject to any specific requirements such as, for instance, consent of a court (article 28 paragraph 1 point 1 of the law of 24 Mai 2002 on the Internal Security Agency and the Foreign Intelligence Agency, article 18 paragraph 1 of the law of 9 June 2006 on the Central Anticorruption Office exempt from such an obligation). Due to possible dangers caused by such measures and the ease of using them, it should be expected that agencies would take recourse to them only as a last resort. However, the revealed information shows that they were used without appropriate justification by higher interest, but their usage was motivated by an interest of the particular agency. Moreover, it is worth pointing out that both ABW and CBA could have intentionally impede conducting the preparatory proceedings (V Ds. 68/09) by not expressing any will to cooperate or misleading the prosecutor's office in clarifying the issue in question.

In the situation when the actual scale of the operational activities carried out against journalists remains unknown, which may cause media speculations, Helsinki Foundations for Human Rights believes that Prime Minister, who is the head of the committee on intelligence agencies and the supervisor having powers towards the heads of the ABW and CBA, should consider requesting them to clarify the issue in question, as well as allowing the access to the documents concerning the preparatory proceedings. As long as the documents remain classified, Wojciech Czuchnowski as well as other journalists are in fact unable to realize their constitutional right of the access to the data concerning them as well as removing information collected against the law.

Clarifying these issues is crucial from the point of view of protecting the democratic society, which is the basis for the free and independent media. Using surveillance methods against journalists prevents them from protecting their sources of information. There is no doubt that this situation violates the freedom of press.