



## **NORLAM**

THE NORWEGIAN MISSION OF RULE OF LAW ADVISERS TO MOLDOVA

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**Ministry of Justice of the Republic of Moldova**

**General Prosecutor's Office of the Republic of Moldova**

**Ministry of Foreign Affairs of the Republic of Moldova**

***Informative note No. 4: COMMENTS OF THE NORLAM ADVISERS REGARDING  
CERTAIN ASPECTS OF THE JUSTICE REFORM***

### **COMMUNICATION CONTROL - RULES ON WIRETAPPING, COVERT AUDIO SURVEILLANCE, ECT.**

#### **1) Norlam's suggestions**

In Norlam's view it is very important to have strict and explicit rules on this type of measures. Wiretapping and covert audio surveillance is a serious intervention in the privacy of citizens and should therefore be limited and controlled. In Norlam's view communication control should always be regarded as a part of a criminal investigation, whether there is a specific suspect in the case or not, and therefore it is natural to regulate this in the Criminal Procedure Code. Due to the intrusiveness of the measure the main control should be left to the court, but with an opening for the prosecutor to make a preliminary decision in urgent cases.

#### **2) A short overview on how this is regulated in Norway**

Enclosed is a copy of the Norwegian Criminal Procedure Act governing different types of communications control as wiretapping and covert audio surveillance.

In Norway communication control may only be used in serious cases and on certain conditions.

The rules are placed in the Criminal Procedure Act of Norway because communication control is always to be regarded as a special investigative measure and as a part of a criminal case. Communication control in Norway can only be initiated in accordance with these rules, and decisions about communication control can never be taken by a police officer/investigator in Norway. Communication control such as wiretapping and covert audio surveillance is a very intrusive measure in to the privacy of a citizen and therefore requires special justification and strict control. When drafting the Norwegian rules it was taken into consideration the relationship with the ECHR Article 8, and the solutions adopted in Norway are meant to be consistent with the ECHR's requirements.

It is required to have court approval before initiating communication control in the form of, for example, wiretapping (cf. § 216a) or covert audio surveillance (cf. § 216m). In urgent cases communication control can be initiated by order of the prosecutor, but this decision must then be brought before the courts for subsequent approval within 24 hours (cf. § 216 d).

For wiretapping (§ 216 a) the condition is that there must be reasonable grounds of suspicion of a crime (or attempt thereof) that may result in more than 10 years in prison, - or that anyone with reasonable grounds can be suspected of crimes against the independence and security, the state's Constitution or the Head of State etc.

Covert audio surveillance (§ 216 m) is such an intrusive measure that it can only be used in the most serious crimes such as terrorist acts, murder, or aggravated robbery and serious drug cases where the crime is regarded as part of the activities of an organized criminal group.

The Norwegian law also contains provisions on canceling or setting up communications, to block communication facilities, and for collecting information on the communication systems that have been in connection with each other (§ 216b). For this type of control conditions are somewhat less strict (lower penalty limit), than for wiretapping, but also in these cases the court's decision is required.

The Norwegian regulations contain rules on time limits, confidentiality, and also right of access, storage and deletion of the collected material. There are also provisions on appointment of a special defense attorney in connection with the court examining the prosecution's request for communication control. In order to maintain silence about the case, and to ensure that the person who is under surveillance is not notified, there are special rules for the court's handling of the case.

In Norway, - in addition to judicial control, there has been also created a separate body that supervises the prosecutors and police handling of cases of communication control (§ 216 h).

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