

Clearing up the bugging mess

Written by Taipei Times Editorial
Thursday, 03 October 2013 09:55

Following the alleged abuse of wiretapping powers by the Supreme Prosecutors' Office Special Investigation Division (SID), Taiwanese have raised concerns over their constitutionally guaranteed right to privacy in communications.

There have been several irregularities in how the SID applied for and conducted its wiretaps, including seemingly unchecked and arbitrary eavesdropping, and procedural irregularities, such as applying for a court order to wiretap one person while actually investigating another. The person subjected to monitoring should be informed after the investigation is concluded for wiretaps to be compliant with the law.

Perhaps most distressing was that the SID ended up eavesdropping on members of the legislature and failed to verify the identity of the individual or institution whose telephone number it was monitoring before adding it to the list of numbers to be bugged.

The judge who approved the warrant criticized the SID for submitting erroneous information, the SID accused the Investigation Bureau (IB) of fouling up the bugging, resulting in blank recordings, and the IB insisted it had recorded conversations from the number that the SID had provided. The SID said it had been unaware the disks it received were blank because it did not listen to them immediately.

During a press conference called after questions about wiretapping were first raised, the SID said that it had failed to verify the number it intended to bug to confirm it was the correct one.

Although, the division is permitted to conduct wiretaps, there is a considerable gap between the stipulations of the Communication Security and Surveillance Act (通訊安全及監聽法) and the way it implements them.

From January to August, the SID applied for 136 communications monitoring warrants, of which the courts rejected only four. The Council of Grand Justices' Interpretation No. 631 intended for the courts to systematically oversee wiretapping practices, but these numbers indicate that they are little more than a rubber stamp for the SID.

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The Surveillance Act places limits on communications monitoring. There are provisions to keep prosecutors in line, as well as for internal administrative supervision. Unfortunately, these provisions are not applied as rigorously as they should be.

The system needs to be tightened to avoid similar mistakes. While it is not easy for judges to know a case will develop once they have approved the warrants, they must still be held accountable to a certain degree. Each wiretapping application needs to be more closely examined to ensure that the body applying for the warrant is diligent enough.

The judges need to be absolutely sure of the reason for the application. Communications monitoring is an imposition on people's privacy and judges should apply the principle of proportionality when deciding whether to approve the warrant.

The applications should clearly identify who is to be monitored and the reason for the monitoring, which needs to be double-checked.

The monitoring process itself should be monitored to make sure the law is observed and to see whether other targets become necessary, which will determine the validity of further investigation.

It should not be assumed that a single warrant gives the monitoring body carte blanche. If, during the monitoring process, it is discovered that the subject of wiretapping is no longer of interest or was the wrong person in the first place, surveillance should be immediately discontinued.

The current situation suggests that there are serious issues within the system that need to be addressed and that the Surveillance Act is not being implemented correctly. If the judiciary is to regain its dignity, it needs to start by clearing this mess up.

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Source: [Taipei Times - Editorials 2013/10/03](#)