

**NATIONAL BUREAU OF CONTROL OF
SPECIAL INVESTIGATION TECHNIQUES**

**2019
ACTIVITY
REPORT**

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ABBREVIATIONS USED

APO	Appellate Prosecutor's Office
APIA	Access to Public Information Act
ASCC	Appellate Specialised Criminal Court
ASPO	Appellate Specialised Prosecutor's Office
BLU	Bulgarian Lawyers Union
CC	Civil Case
CCP	Code of Criminal Procedure
CCCCIAP	Commission for Combating Corruption and Confiscation of Illegally Acquired Property
CCSSAUSITAE CD	Commission for Control of Security Services, Application and Use of Special Investigation Techniques and Access to Electronic Communications Data
CC	County Court
CA	Court of Appeal
DGFOC	Directorate-General for the Fight against Organised Crime
DC	District Court
DPO	District Prosecutor's Office
DPO	District Prosecutor's Office
ECHR	European Court of Human Rights
GDBP	General Directorate of Border Police
GDNP	General Directorate of the National Police
ISD	Internal Security Directorate
MAPO	Military Appellate Prosecutor's Office
MC	Military Court
MCA	Military Court of Appeal
MDPO	Military District Prosecutor's Office
MIS	Military Information Service
MPS	Military Police Service
MJ	Minister of Justice
MD	Ministry of Defence
MI	Ministry of the Interior
NA	National Assembly
NBCSIT	National Bureau of Control of Special Investigation Techniques
NIJ	National Institute of Justice
OCG	Organised Criminal Group
PC	Penal Code
PE	Physical Evidence
PCC	Private Criminal Case
RBPO	Prosecutor's Office of the Republic of Bulgaria
RDMI	Regional Directorate of the Ministry of Interior
RACIPA	Regulations for Application of the Classified Information Protection Act
SCC	Sofia City Court
SCPO	Sofia City Prosecutor's Office
SDIA	Sofia Directorate of Internal Affairs
SITA	Special Investigation Techniques Act
SCC	Specialised Criminal Court
SIT	Specialised Intelligence Techniques
SPO	Specialised Prosecutor's Office
SANS	State Agency for National Security
SATO	State Agency for Technical Operations
SMLDA	State and Municipal Liability for Damages Act
SCIS	State Commission on Information Security
SIA	State Intelligence Agency
SCPO	Supreme Cassation Prosecutor's Office
SCC	Supreme Court of Cassation
SJC	Supreme Judicial Council

I. Purpose and scope of the report

The National Bureau of Control of Special Investigation Techniques is an independent state body that monitors the procedures for requesting, authorising and implementing special investigation techniques, as well as the storage and destruction of information obtained through them. The National Bureau's task is to protect the rights and freedoms of citizens against the illegal use of special investigation techniques.

The NBCSIT's activity is regulated by the Special Investigation Techniques Act provisions stipulated under Art.34b to Art.34h therein.

According to Art.34b, para.7 of the Special Investigation Techniques Act, every year by May 31 the NBCSIT submits an annual report on its activities to the National Assembly, which contains summary data on the authorisation, application and use of special investigation techniques, storage and destruction of the information obtained through them, as well as on protection of the rights and freedoms of citizens against SIT illegal use.

Publication of NBCSIT's annual reports increases transparency by regularly informing the Parliament and the public about their commitment in implementation of the Special Investigation Techniques Act and providing statistics on the number of persons who were under control during the reporting period, the permits issued and the operational methods applied.

1. Staff and Financing

In 2019, the National Bureau comprised a chairman, vice-chairman and three members. The members of the National Bureau were assisted by fourteen employees in the administration.

The 2019 State Budget Act of the Republic of Bulgaria provided for a budget of the National Bureau in the amount of BGN 1,619,100.00. As of 31 December 2019, BGN 1,287,466.00 have been spent (BGN 1,204,267.00 for current and BGN 83,199.00 for capital expenditures). In 2020, the National Audit Office conducted an audit to certify the annual financial statements for 2019 of the National Bureau.

2. Activity of the NBCSIT under the SITA

In 2019, the National Bureau of Control of Special Investigation Techniques organised its activities according to the main priorities adopted at the beginning of the mandate regarding:

2.1. Active monitoring of the procedures relating to requesting, authorising and applying special investigation techniques and overseeing the organisation regarding storage and destruction of the information obtained during the use of the special investigation techniques, including changing the rhythm, form and frequency of the inspections of the structures under Art.13, Art.15 and Art.20 of the Special Investigation Techniques Act.

The National Bureau of Control of Special Investigation Techniques amended the Methodology for monitoring and control of the procedures for authorisation, application and use of the special investigation techniques, storage and destruction of the information obtained through them and on protection of the rights and freedoms of citizens against their illegal use.

By a decision of the NBCSIT dated January 24, 2019, the Methodology was adopted and sent to all bodies under Art.13, Art.34d and Art.20 of the Act on Special Investigation Techniques.

The activity of the National Bureau of Control of Special Investigation Techniques is carried out according to this Methodology.

2.2. Checks on alerts filed by citizens and non-governmental organisations, taking into account that reporting irregularities is an essential source of information in order to establish the misuse of special investigation techniques.

At the beginning of the year, the National Bureau of Control of Special Investigation Techniques amended and supplemented their internal rules following alerts of illegal use of special investigation techniques. These amendments include requirements regarding: the content of the alert to the NBCSIT; the procedure for registration of the alert; the procedure for investigation and verification of the alert, as well as the procedure and conditions under which the citizens and the institutions shall be notified of the result of the inspection performed.

In order to facilitate the access of the citizens, a new section titled "Alerts under the Act on Special Investigation Techniques", including heading "NBCSIT's work on alerts on special investigation techniques" is developed on the NBCSIT's website.

To further convenience of the citizens, a "sample alert" is published aiming at helping filing alerts for illegal application of special investigation techniques, including the form and the available information about the notification regime in case of illegal use and application of special investigation techniques to citizens.

2.3. Improving communication and joint work with non-governmental organisations in order to formulate and analyse identified gaps, violations and inconsistencies in the use of special investigation techniques and search for solutions that would increase the protection of constitutional rights of the citizens.

In 2019, the National Bureau of Control of Special Investigation Techniques participated in a meeting of the Civil Council under the Supreme Judicial Council. The Chairman of the NBCSIT acquainted the members of the Civil Council under the Supreme Judicial Council with the 2018 Annual Report of NBCSIT and the priorities for the mandate 2019 – 2024. Problem areas and proposals for change in the legal framework were discussed in order to increase the effectiveness in the application of special investigation techniques and prevent creation of preconditions for illegal violation of the rights and freedoms of citizens.

Also, the need for legislative changes in the Special Investigation Techniques Act and in the Criminal Procedure Code was discussed.

The members of the Civil Council under the Supreme Judicial Council recognised that as a result of the control activity of NBCSIT there was a significant improvement in the organisation and performance of the courts in authorising the use of special investigation techniques.

The main priority of NBCSIT is to maintain a good inter-institutional dialogue with the legislative, judicial and executive authorities, as well as with the non-governmental sector to promote the good practices adopted with the establishment of the National Bureau of Control of Special Investigation Techniques.

The NBCSIT held a series of national and international meetings with institutions and organisations in order to increase the effectiveness in the application of special investigation techniques and protection of the constitutional rights and freedoms of citizens.

In 2019, the NBCSIT held a working meeting with the bodies under Art.13, Art.15 and Art.20 of the Act on Special Investigation Techniques. The meeting was attended by representatives of the court, the prosecutor's office, security and public order services, executive organisations, an expert team from the National Assembly and the Secretary of the Security Council at the Council of Ministers. The purpose of the meeting was to provide an opportunity for the representatives of the bodies under Art.13, 15 and 20 of the Special Investigation Techniques Act, to share problems and good practices and to exchange opinions that would help increasing the efficiency in the application of special investigation techniques and in protection of the constitutional rights and freedoms of citizens.

2.4. Research and analysis of international experience, legislative decisions and good practices of other countries regarding protection of citizens' rights with a view to improve national legislation and procedures concerning implementation of special investigation techniques.

The Chairman of the National Bureau of Control of Special Investigation Techniques took part in the International Intelligence Oversight Forum. The forum was organised by the Special Rapporteur on Security and hosted by the British Government and the British Foreign Office. The initiative for the forum was supported by the Department of Information Policy and Management at the University of Malta and the Research Group in Groningen, the Netherlands.

At the forum, topics were discussed regarding: updating the current legislation in the field of surveillance, conducting a dialogue on the best methods for training the members of the relevant bodies in charge of supervisory tasks, exchanging views and good practices as well as improving interaction between the supervisory authorities.

In 2019, the Chairman and Vice-Chairman of the NBCSIT took part in the second European Conference on Intelligence Oversight, organised by the Dutch Oversight Committee for Intelligence Control and Security Services. The aim of the conference was to bring together specialised bodies from the EU Member States, to exchange knowledge and experience and to intensify cooperation between the national supervisory bodies implementing and / or requesting the use of special investigation techniques and those who exchange information obtained by the use of special investigation techniques with foreign partners.

The Chairman of the National Bureau of Control of Special Investigation Techniques, Mr. Plamen Kolev, acquainted the participants with the functions and powers of

NBCSIT stipulated under the Special Investigation Techniques Act, and shared the good practices applied by the National Bureau.

Specific topics were discussed during the conference, namely:

- ✓ supervision of special services;
- ✓ cooperation between intelligence and partner services;
- ✓ legality and quality of information exchange;
- ✓ complications in the work regarding complaints and alerts;
- ✓ strengthening control over the international intelligence cooperation;
- ✓ effective cooperation between supervisory authorities.

The participants in the conference shared their good practices and agreed on the idea that it is necessary to set specific common goals, as well as the scope of information that can be shared between supervisors. They expressed their hope that the challenges could be overcome through dialogue between the supervisors in charge of exchanging good practices and training at national level in order to attract the attention of the competent national structures and that supervisors from different countries would continue to look for ways to intensify cooperation between them.

Also, the idea of setting up European Supervisory Community was discussed.

The main activity of the National Bureau of Control of Special Investigation Techniques in 2019 was monitoring and controlling the procedures for authorisation, application and use of special investigation techniques, storage and destruction of information obtained through special investigation techniques, as well as protection of rights and freedoms of citizens against the illegal use of special investigation techniques.

In carrying out its activities in 2019, the National Bureau found that the judicial control over the use and application of special investigation techniques is significantly increased, the bodies under Art.15 of the Special Investigation Techniques Act have increased the requirements for applicants. This is a guarantee for strict application of the law and accordingly we believe that it will lead to increasing the requirements applied by the heads of the bodies under Art.13 of the Special Investigation Techniques Act to their employees.

The National Bureau shall give obligatory instructions to the bodies providing and applying special investigation techniques, related to the improvement of the regime

of their use and application, in all cases when a task under Art.34b, para.1 of the Special Investigation Techniques Act is assigned.

Pursuant to Art.34e, para.1, item 3 of the Special Investigation Techniques Act and in order to improve the regime of use and application of special investigation techniques, as well as to store and destroy the information obtained through them, in 2019 the NBCSIT produced 7 mandatory instructions to:

- ✓ the Vice-Chairman of the Supreme Court of Cassation and the Chairmen of the Sofia Court of Appeal, the Military Court of Appeal, the Specialised Criminal Court of Appeal, the District Court, the Military Court, the Specialised Criminal Court and Supreme Judicial Council;
- ✓ the Prosecutor General;
- ✓ the administrative head of the Specialised Prosecutor's Office;
- ✓ the Minister of Interior;
- ✓ the Chairman of the State Agency for National Security;
- ✓ the Chairman of the State Agency for Technical Operations.

In 2019, the National Bureau of Control of Special Investigation Techniques contacted the Prosecutor's office for two cases in which data were found for illegal use of special investigation techniques.

The NBCSIT prepared an opinion on a request from the Ministry of Justice on a complaint to the European Court of Human Rights filed in 2012, case No. 70078/12.

In 2019, special investigation techniques were used against 3,310 people. 6,039 requests for the use of special investigation techniques were prepared, on which the judges issued 5,396 permits and 643 refusals. The procedures are 7.34 % more compared to 2018, and the requests have decreased by 0.98 %. As a result of the applied special investigation techniques, 1,124 physical evidence were prepared.

In connection with its powers under Art.34b, para.1 of the Special Investigation Techniques Act in 2019 the National Bureau held 44 meetings and 457 decisions were made.

- ✓ 230 inspections were carried out (191 complex inspections; 36 incidental inspections on alerts of citizens and 3 thematic inspections) of the bodies under Art.13, 34n, 15 and 20 of the Special Investigation Techniques Act through the methods stipulated in Art.34e, para.1, items 1 and 2 of the same act (133 / 2018; 323 / 2017; 287 / 2016; 242 / 2015; 203 / 2014).

When performing complex inspections of the bodies under Art.20 of the Special Investigation Techniques Act, special attention was paid to the inspection of availability and reporting of technical means and equipment.

As a result of these inspections, problems, various practices and omissions in procedures related to the application of the special investigation techniques were identified, including in the storage and destruction of the information obtained under the Special Investigation Techniques Act and in the preparation of reports under Art.29, para.7 of the same act and in keeping and completing the special investigation techniques registers.

- ✓ A register and rules for its maintenance have been created and adopted and filed to the State Intelligence Agency - 2 copies (Order No. 3-176 / 21 October 2019) and to Military Information Service - 2 copies (Order No. 3-178 / 25 October 2019).
- ✓ 46 complaints were received from citizens, all of which were answered.
- ✓ One (1) application was received with a request for information under the Access to Public Records Act (1/2018, 2/2017, 0/2016, 6/2015, 0/2014).

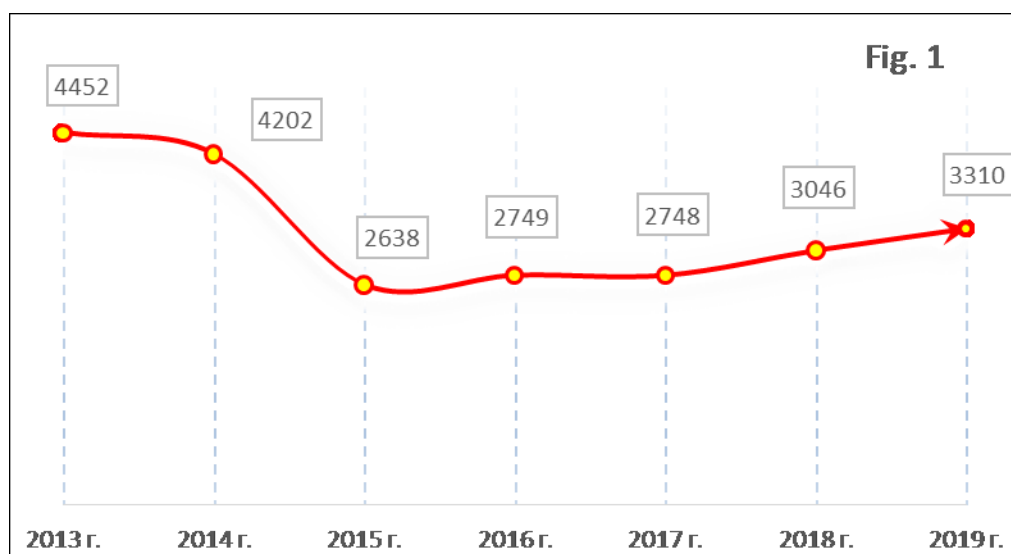
II. Bodies under Art.13 of the Special Investigation Techniques Act

The right to use special investigation techniques according to their competence have the bodies, indicated under Art.13, para.1 - 4 and Art.34n of the Special Investigation Techniques Act.

1. Requests

In 2019, special investigation techniques were used in relation to 3,310 persons compared¹ to 3,046 persons in 2018 and 2,748 in 2017. (Fig. 1)

¹ According to data of bodies under Art. 20 of the Special Investigation Techniques Act .



The analysis of the statistical data and the findings out of the inspections of the National Bureau of Control of Special Investigation Techniques leads to the conclusion that approximately the same number of persons to whom special intelligence techniques are applied is preserved. The National Bureau of Control of Special Investigation Techniques found that the bodies under Art.15 of the Special Investigation Techniques Act have increased their criteria for issuing permits for the use of special investigation techniques and continue the established practice to require all materials on which the request is based. This is a key element of the inspections of the National Bureau of Control of Special Investigation Techniques.

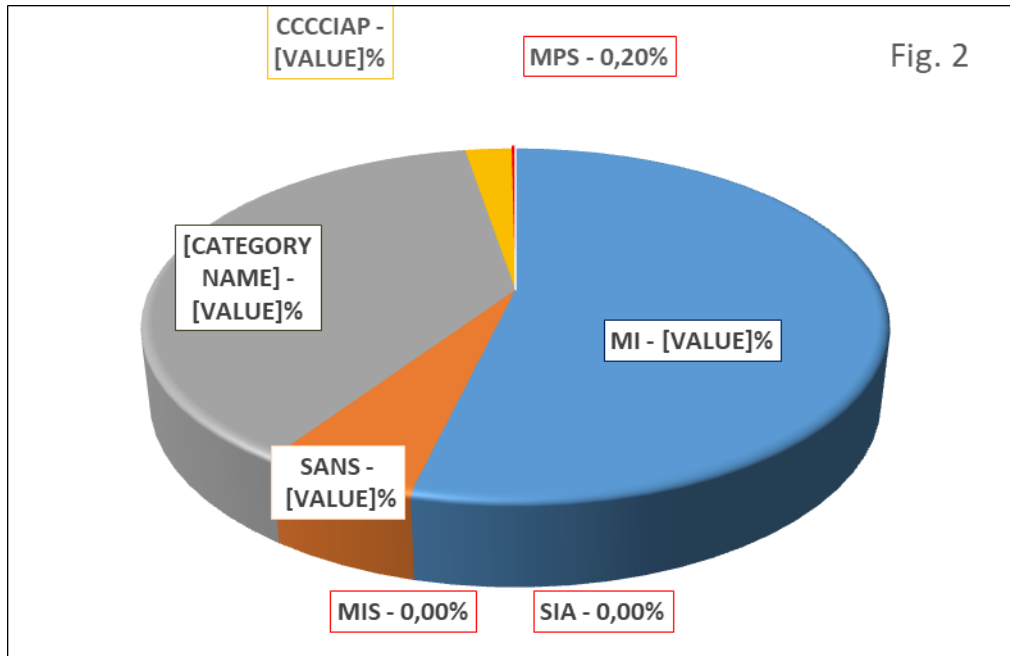
In 2019, the applicants requested the application of operational methods², as follows: Art.5 – 4,585 ; Art.6 – 5,112; Art.7 – 4,593; Art.8 - 578; Art.9 - 227; Art.10 - 546; Art.10a - 2 ; 10b - 38 and Art.10c - 38 or a total number of 15,719 (in 2018 – 16,002 and in 2017 – 17,714).

Over the same year, the relative share of applicants in the total number of initiated procedures is:

- Ministry of the Interior – 53.73 % (60.78 % in 2018; 56.50 % in 2017);
- Prosecutor's Office of the Republic of Bulgaria – 37.95 % (compared to 34.27 % in 2018 and 36.94 % in 2017);
- State Agency for National Security – 5.69 % (compared to 4.82 % in 2018 and 6.41 % in 2017);
- Military Police Service – Ministry of Defence – 0.20 % (compared to 0.13 % in 2018 and 0.15 % in 2017);

² According to the data of the bodies under Art.20 of the Special Investigation Techniques Act.

- Commission for Counteraction to Corruption and Confiscation of Illegally Acquired Property – 2.43 % (compared to 0.53 % in 2018);
- Military Information Service – Ministry of Defence – 0 and State Intelligence Agency – 0. (Fig. 2)



A comparison of data for the last few years shows that the downward trend in procedures at the request of the State Agency for National Security has continued: 31.5% in 2014 compared to 19.16% in 2015; 10.08% in 2016, compared to 6.41% in 2017; 4.82% in 2018, compared to 5.69% in 2019 (over 500% for the period 2014 - 2019). In 2019, the Military Information Service and the State Intelligence Agency did not use special investigation techniques in accordance with their competence.

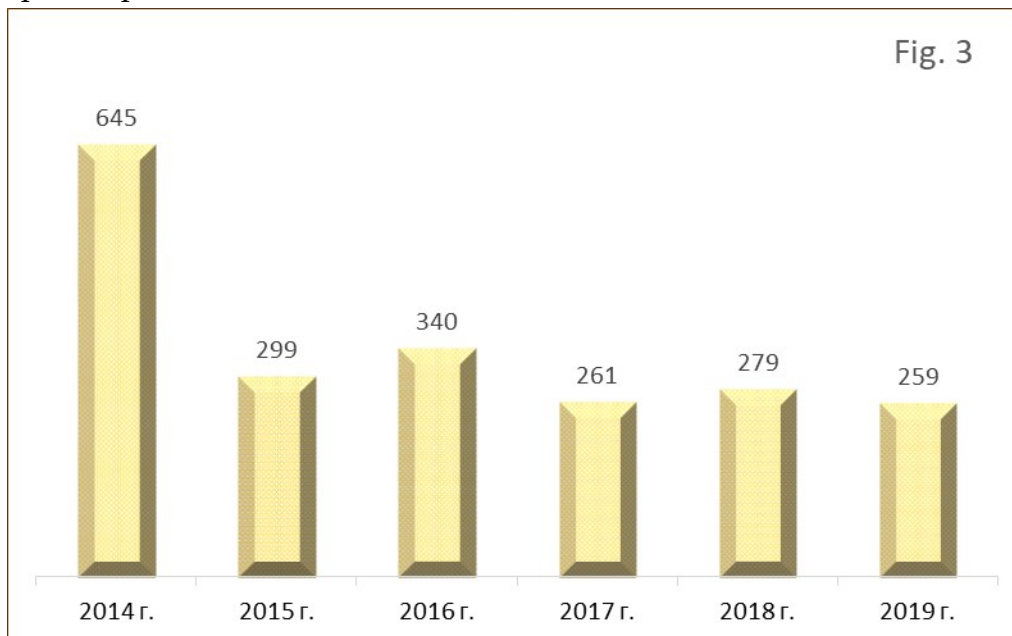
The main reasons for the decrease are the changed terms in Art.21, para.1, item 2 of the Special Investigation Techniques Act - for prevention of serious intentional crimes under Chapter One of the Special Part of the Penal Code and protection of national security, the use of special investigation techniques is now permissible for up to two years and can be extended for up to three years in total (SG, issue 103/2016), as well as the specifics of the activities of the State Agency for National Security, Military Information Service and the State Intelligence Agency.

In 259 cases³ special investigation techniques were used to establishing the identity of persons for whom there was data and grounds to assume that they were

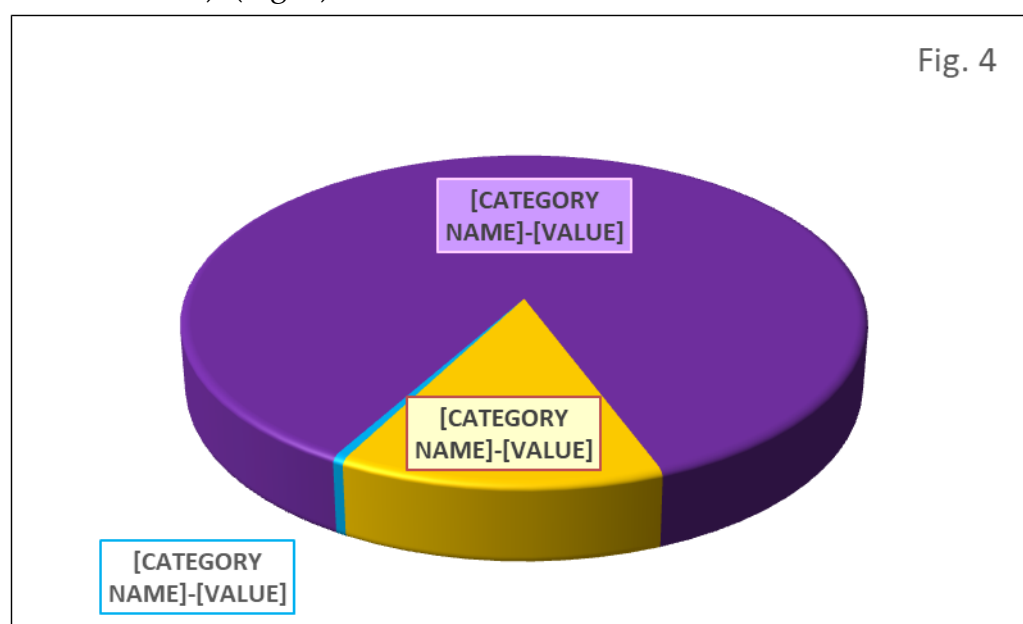
³ According to the data of the bodies under Art. 20 of the Special Investigation Techniques Act.

preparing, committing or had committed a serious intentional crime listed in the Act (Art.12, para.1, item 4 of the Special Investigation Techniques Act) (Fig. 3)

The analysis of the data shows that after 2015 there is a relative stability of these specific procedures.

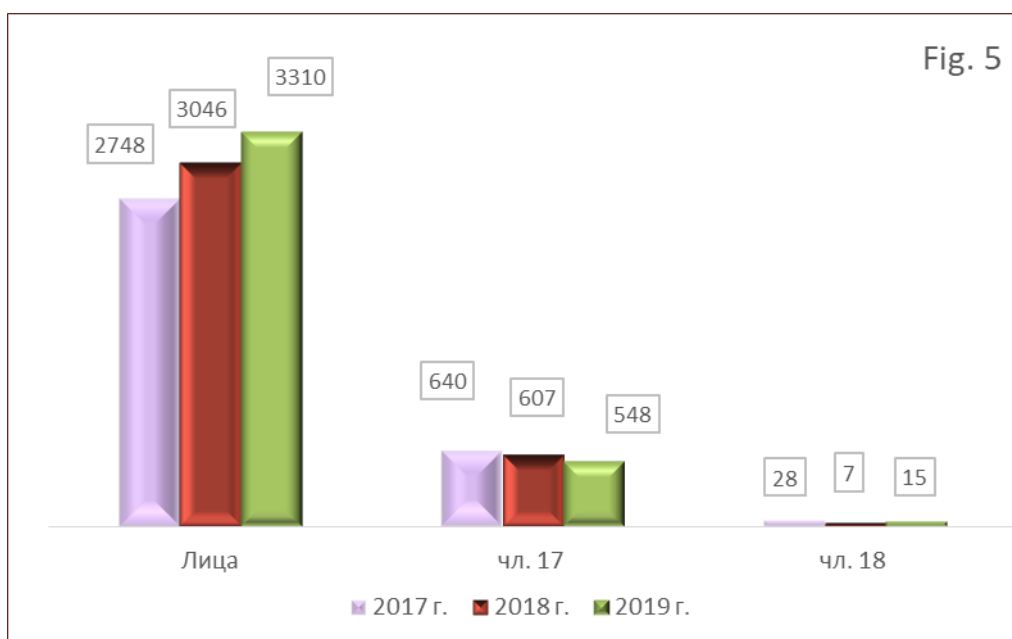


The procedures under Art.12, para.1, item 4 of the Special Investigation Techniques Act shall be distributed among the bodies under Art.13 of the same act in the following ratio: Ministry of Interior – 85.82 % (compared to 79.21 % in 2018 and 72.40 % in 2017); Prosecutor's office – 13.70 % (compared to 20.07 % in 2018 and 27.20 % in 2017); State Agency for National Security – 0.48 % (compared to 0.72 % in 2018 and 0.40 % in 2017). (Fig. 4)



The relative share of the prosecution has decreased by about 7%, as much as it has increased at the Ministry of Interior.

For 548 procedures (16.56% of the total number), the application of special investigation techniques has started under the terms and conditions of Art.17 of the Special Investigation Techniques Act⁴ (compared to 607 procedures – 19.93% of the total number in 2018, and 640 procedures – 23.29 % of the total number in 2017), and for 15 procedures (0.45 % of the total number) – the application of special investigation techniques has started under the terms and conditions of Art.18 of the Special Investigation Techniques Act⁵ (7 – 0.23 % in 2018, respectively (29 – 1.02 %) in 2017. (Fig. 5)



In 2019, in 3,569 procedures regarding persons and objects (3,325 in 2018 and 3,009 in 2017) - 6,039 requests were prepared (6,099 in 2018 and 5,939 in 2017)⁶.

The analysis shows that in 2019 the procedures are 6.84 % more than in 2018, and the requests are 0.99 % less, which shows more precise planning and preparation for the use of this specific method of proof.

⁴ Application in urgent cases, starting immediately - with the permission of a judge.

⁵ Application without prior permission by a judge in the immediate danger of committing serious international crimes or a threat to national security.

⁶ According to data of the bodies under Art. 15 and Art. 20 of the Special Investigation Techniques Act. The number of requests is greater than the number of persons and objects, because in relation to one person there is more than one request (when a new communicator, address, vehicle, etc.).

2. Substantive grounds for the use of special investigation techniques

Special Investigation Techniques are admissible for detection of only serious intentional crimes, explicitly indicated in Art.172, para.2 of the Criminal Procedure Code and Art.3, para.1 of the Special Investigation Techniques Act.

In 2019 special investigation techniques were used most often in connection with acts under Art.321 (Organised criminal group) – 2,617 cases (48.78% of the total number); under Art.354a (drugs) - 803 cases (14.91%); under Art.234 (excise goods) - 279 cases (5.21%); under Art.195 (thefts) - 213 cases (3.97%); under Art.301 (bribery) - 178 (3.32%); under Art.209 (fraud) - 145 cases (2.71%); and under Chapter one of the special part of the Penal Code - 181 cases and others⁷.

The comparison shows that in 2018 special investigation techniques were used most often in connection with acts under Art.321 (Organised criminal group) - 2741 cases (53.17 % of the total number); under Art.354a (drugs) - 736 cases (14.28%); under Art.234 (excise goods) - 321 cases (6.23%); under Art.209 (fraud) - 223 cases (4.33%); under Art.195 (thefts) - 163 cases (3.16%); under Art.301 (bribery) - 154 cases (2.99%) and others.

In 2017⁸ special investigation techniques are most often used also under Art.321 - 2040 cases (43.52 %); under Art.354a - 686 cases (14.63 %); under Art.234 - 334 cases (7.12 %); under Art.195 - 235 cases (5.01 %); under Art.209 - 156 cases (3.33 %); under Art.242 - 114 cases (2.43 %) and others.

It's obvious that the practice continues - the bodies under Art.13 use special investigation techniques most often for detection of crimes under Art.321, Art.354a, Art.234 and Art.195 of the Penal Code.

III. Bodies under Art.15 of the Special Investigation Techniques Act

The requests of the competent authorities shall be submitted to the Chairman of Sofia City Court, the respective district or military courts, to the Specialised Criminal

⁷ According to the data of the bodies under Art.15 of the Special Investigation Techniques Act.

⁸ See the reports of the National Bureau of Control of Special Investigation Techniques for the activities carried out in 2017 and 2018.

Court or to a deputy chairperson authorised by them, who shall rule within 48 hours with a motivated act (Art.15, para.1 of the Special Investigation Techniques Act).

For crimes committed by judges, prosecutors and investigators, their accomplices and witnesses, permission is given by the Chairman of the Sofia Court of Appeal or by the Deputy Chairman authorised by him, if the case is under the jurisdiction of the Sofia City Court, and in other cases – by the Chairman of the Military Court of Appeal or of the Appellate Specialised Prosecutor's Office, or their authorised deputies. On this basis, according to its competence under Art.15, para.4 of the Special Investigation Techniques Act, the Appellate Specialised Criminal Court has ruled 35 permits against 19 persons.

The Deputy Chairman of the Supreme Court of Cassation, head of the Criminal Chamber, shall rule on requests against the Chairman of the Sofia City Court, the Military Court of Appeal and the Appellate Specialised Criminal Court or their deputies. In 2019, no such requests or acts were received.

With the entry into force of the Counter-Terrorism Act, in Art.15 of the Special Investigation Techniques Act, a new paragraph was created - paragraph 2, according to which the bodies under Art.13, para.4⁹ of the Special Investigation Techniques Act shall submit the request to the Chairman of the Specialised Criminal Court or a Deputy Chairman authorised by him, who shall issue a reasoned act within 24 hours.

1. Authorisation

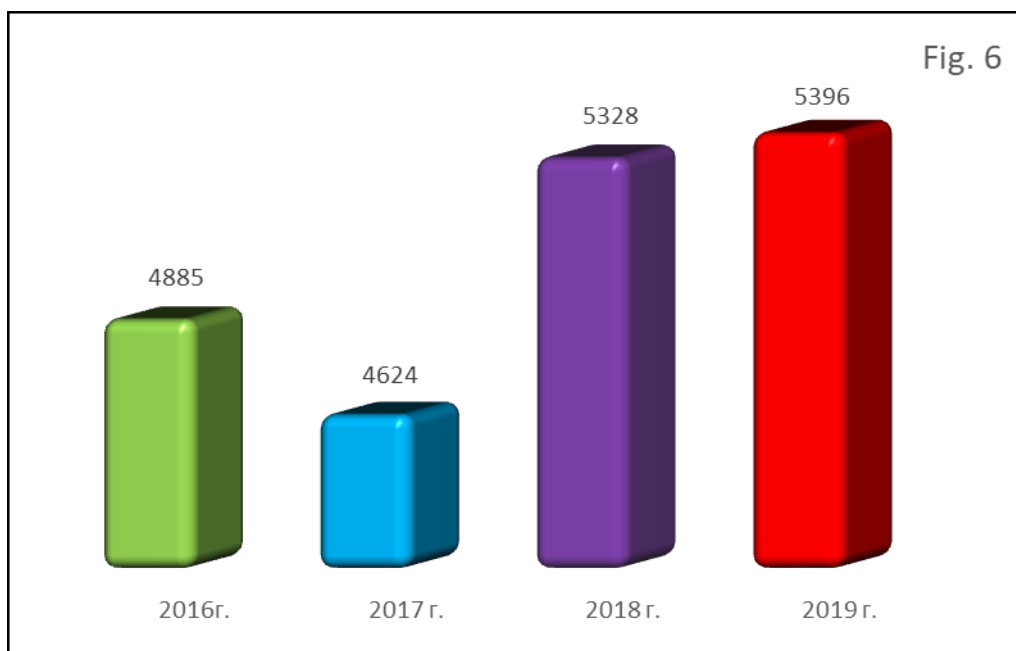
In 2019, the bodies under Art.13 of the Special Investigation Techniques Act have exercised their right to request the use of special investigation techniques by providing the bodies under Art.15 of the Special Investigation Techniques Act a total of 6,039 requests for persons and objects. Of these, 5,396 are allowed (3,799 on initial requests and 1,597 for extension)¹⁰.

Out of a total of 6,099 requests for persons and objects in 2018, 5,328 were allowed (3,909 for initial requests and 1,419 for extension).

⁹ The request for use of SIT for prevention of crimes under Art.108a, para.1 - 4, para.6 and 7, Art.109, para.3, Art.110, para.1, proposal six, art.110, para.2, Art.308, para.3, item 1 and Art.320, para.2 of the Penal Code shall be submitted by the Chief Prosecutor of the Republic of Bulgaria, the Chairman of SANS, the Chairman of SIA, the Director of MIS under the Ministry of Defence or their authorized deputies and by the Secretary General of the Ministry of Interior.

¹⁰ According to data of bodies under Art.15 of the Special Investigation Techniques Act.

In 2017, permits were issued for 4,624 requests for persons and objects (3,640 for initial requests and 984 for extension), and in 2016 – 4,885 (3,772 for initial requests and 1,113 for extension) (Fig. 6)



In 2019, the permits have increased by 68 compared to 2018, which allows us to make conclusion about a relative stability.

The distribution by courts is as follows:

Specialised Criminal Court – 3,006 permits, County Court - Plovdiv - 355, County Court - St. Zagora - 271, Sofia City Court - 146, County Court - Blagoevgrad - 141, County Court - Ruse - 127, County Court - Pleven - 114, County Court - Vidin - 105, County Court - Burgas - 99, County Court - Pazardzhik - 98, County Court - Varna - 95, County Court - Haskovo - 93, County Court - Kyustendil - 91, County Court - Veliko Tarnovo - 90, County Court - Sliven - 82, County Court - Sofia - 81, County Court - Razgrad - 57, County Court - Pernik - 42, Appellate Specialized Criminal Court - 35, County Court - Lovech - 28, County Court - Kardzhali - 28, County Court - Shumen - 27, County Court - Gabrovo - 25, County Court - Smolyan - 24, County Court - Silistra - 23, County Court - Yambol - 19, Military Court - Sofia - 17, County Court - Montana - 16, County Court - Targovishte - 16, Military Court - Sliven - 16, County Court - Vratsa - 14, County Court - Dobrich - 13, Military Court - Plovdiv - 2, Court of Appeal - Sofia - 0, Military Court of Appeal - 0, Supreme Court of Cassation - 0.

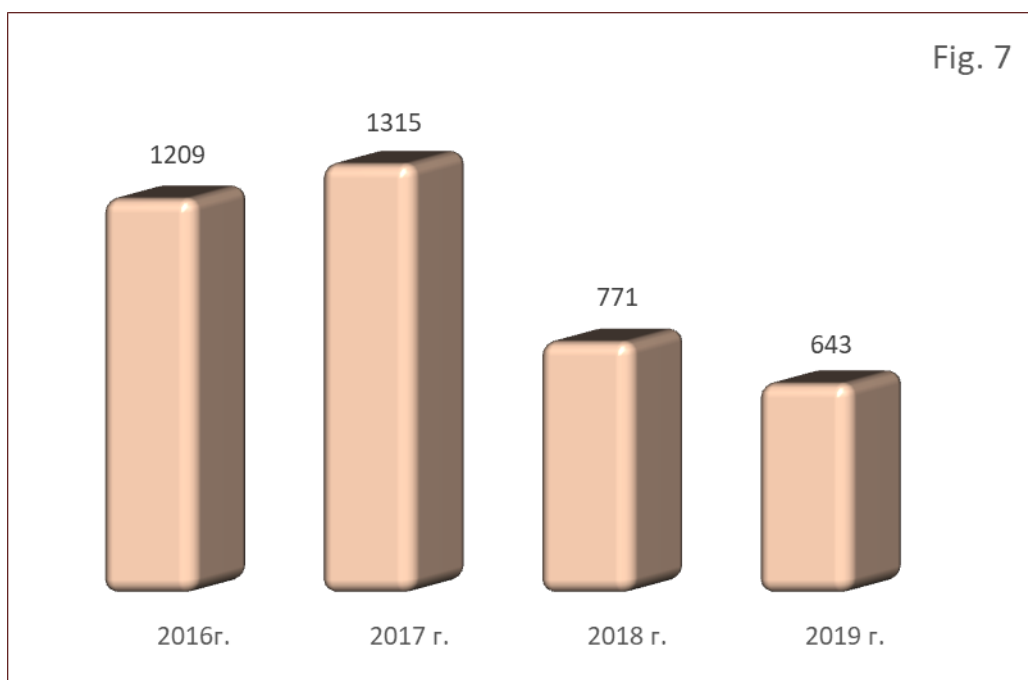
During the year, at the request of the Prosecutor General, 8 permits were issued against 4 persons, and at the request of the Supreme Cassation Prosecutor's Office under Art.34n of the Special Investigation Techniques Act - 1 permit for 1 person.

The data show that 70.01 % of all permits were issued by: Specialised Criminal Court (3,006), County Court - Plovdiv (355), County Court - Stara Zagora (271) and Sofia City Court (146).

In 2019, the Specialised Criminal Court also ruled on the most requests (56.35% of all court cases). This, on the one hand, leads to an increase in the specific competence of judges, but on the other hand - to an excessive workload, which is a prerequisite for making mistakes.

2. Refusal

In 2019, the judges ruled refusals in 643 cases¹¹ (in 2018 the refusals were 771, in 2017– 1315, and in 2016– 1209). (Fig. 7)



In 2019 the trend continues i.e. the courts with the highest number of requests issued the highest number of refusals.

During the year 3,403 requests were received in the Specialised Criminal Court and 397 refusals were issued, which represents 11.67% of the requests submitted to the

¹¹ According to the data of the bodies under Art. 20 of the Special Investigation Techniques Act.

court, in the County Court - Plovdiv (430 requests / 75 refusals - which is 17.44%) and Sofia City Court (216 requests / 50 refusals - which is 23.15%).

In 2019, 14.75 % of the requests of the State Agency for National Security were rejected (in 2018 – 18.73 %; in 2017 – 25.77 %; in 2016 – 30.57 %); and 10.33 % those of the Ministry of Interior (13.40 %; 25.03 %; 18.86 %); and 9.90 % of those of the Prosecutor's Office (11.66 %; 19.84 %; 15.76 %) and 20.69 % of those of the Commission for Combating Corruption and Confiscation of Illegally Acquired Property.

The main reasons for refusals are due to: lack / insufficiency of data on the person's complicity in the described criminal activity; lack of data on the existence of an Organised Criminal Group, despite its legal definition in Art.93, item 20 of the Penal Code; lack of reasons for impossibility or extreme difficulties in collecting the necessary data without the use of special investigation techniques; failure to indicate the achieved results in the requests for extension of the implementation period, etc.

The 2019 data allow us to conclude that the control over the procedures is significantly increased as prior to the issuance of the judicial act, an in-depth analysis is performed on all submitted materials and the compliance with the law is checked.

Diverse practice was found regarding the storage of documents related to the procedure for application of special investigation techniques:

- ✓ Private criminal cases initiated on requests under the Special Investigation Techniques Act are kept in a registry for classified information together with other cases, files and documents, which may lead to the use of information in violation of the "need to know" principle;
- ✓ Some of the documents (unclassified) on the procedures for application of special investigation techniques are stored separately from private criminal cases in other volumes.

IV. Bodies under Art.20 of the Special Investigation Techniques Act

In 2019, the National Bureau of Control of Special Investigation Techniques carried out 69 inspections of the activity of the State Agency for Technical Operations, of which: 32 complex (of structures applying special investigation techniques), 1 thematic (on a case-by-case basis) and 36 incidental (on alerts from citizens). In the

Specialised Directorate "Operational Technical Operations" under the State Agency for National Security, 37 inspections were carried out - 1 complex and 36 incidental.

1. Operational methods

The total number of operational methods allowed for implementation for 2019 is 15,719 (in 2018 they are 16,002; in 2017 – 13,614, and in 2016 – 14,382).

The number of operational methods (allowed / applied) by type is as follows¹²:

- Art.5 (observation) – 4,585 observations allowed (against 4,622 for 2018 and 3,985 for 2017) and 1,628 observation were applied (against 1,669 in 2018 and 1,699 in 2017);
- Art.6 (eavesdropping) – 5,112 eaves-droppings allowed (5,154 for 2018 and 4,516 for 2017) and 5,076 eaves-droppings were applied (5,124 in 2018 and 4,470 in 2017);
- Art.7 (tracking) – 4,593 allowed (4,609 for 2018 and 3,991 for 2017) and 1,621 carried out (1,638 in 2018 and 1,673 in 2017);
- Art.8 (penetration) - 578 penetrations allowed (712 for 2018 and 498 for 2017) and 68 penetrations carried out (60 in 2018 and 67 in 2017);
- Art.9 (marking) - 227 allowed (231 for 2018 and 169 for 2017) and 22 performed (29 for 2018 and 13 for 2017);
- Art.10 (correspondence check) - 546 correspondence checks allowed (615 for 2018 and 398 for 2017) and 28 correspondence checks performed (47 in 2018 and 60 in 2017);
- Art.10a (controlled delivery) - 2 controlled deliveries allowed (7 for 2018 and 38 for 2017) and none is carried out (2 in 2018; this method was not applied in 2017 and in 2016);
- Art.10b (trust transaction) - 38 trust transactions allowed (25 for 2018 and 28 for 2017) and 11 trust transactions applied (16 in 2018 and 8 in 2017);
- Art.10c (undercover officer) - 38 undercover officers allowed (27 for 2018 and 28 for 2017), with 18 undercover officers used (22 in 2018 and 12 in 2017).

¹² According to the data of the bodies under Art.20 of the Special Investigation Techniques Act.

In 2019, a total of 8,472 operational methods were applied (8,607 in 2018 and 8,002 in 2017)¹³, which represents 53.90 % of the permitted operational methods. For comparison, in 2018 they are 53.79 %, and in 2017 – 58.78 %.

The trend continues in 2019, namely - the specific operational methods are applied when an operational need arises and when conditions are created for their implementation.

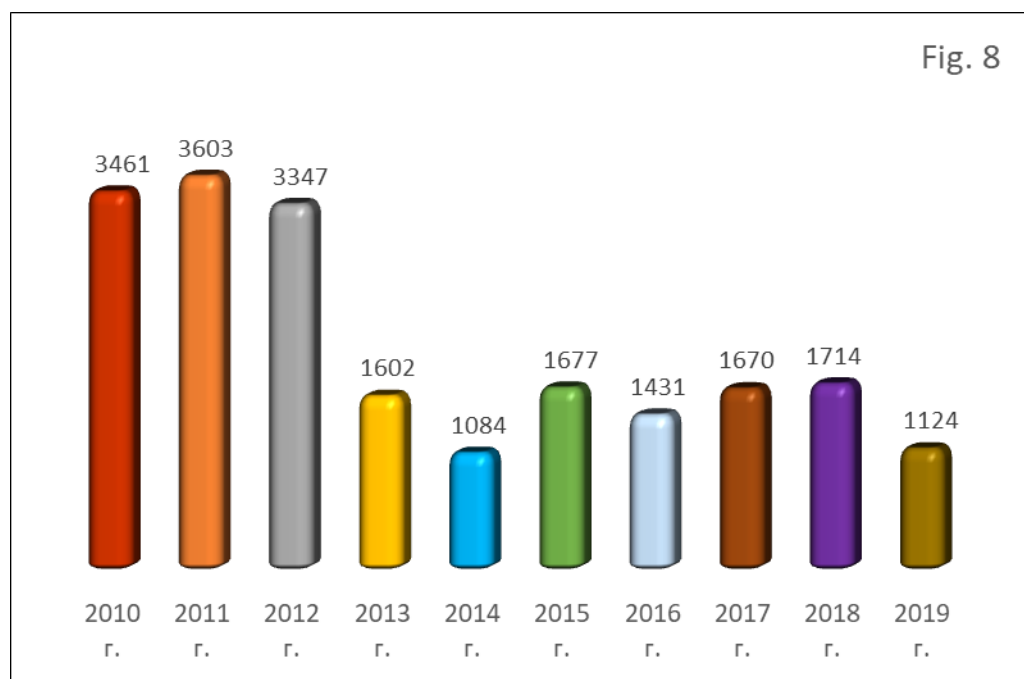
2. Refusal to apply special investigation techniques under Art.22, para.3, item 1 and item 2 of the Special Investigation Techniques Act

During the year the bodies under Art.20 of the Special Investigation Techniques Act have applied the hypotheses of Art.22, para.3, item 2 of the Special Investigation Techniques Act in 4 cases - for obvious factual errors.

V. Results of the application of special investigation techniques

1. Physical evidence

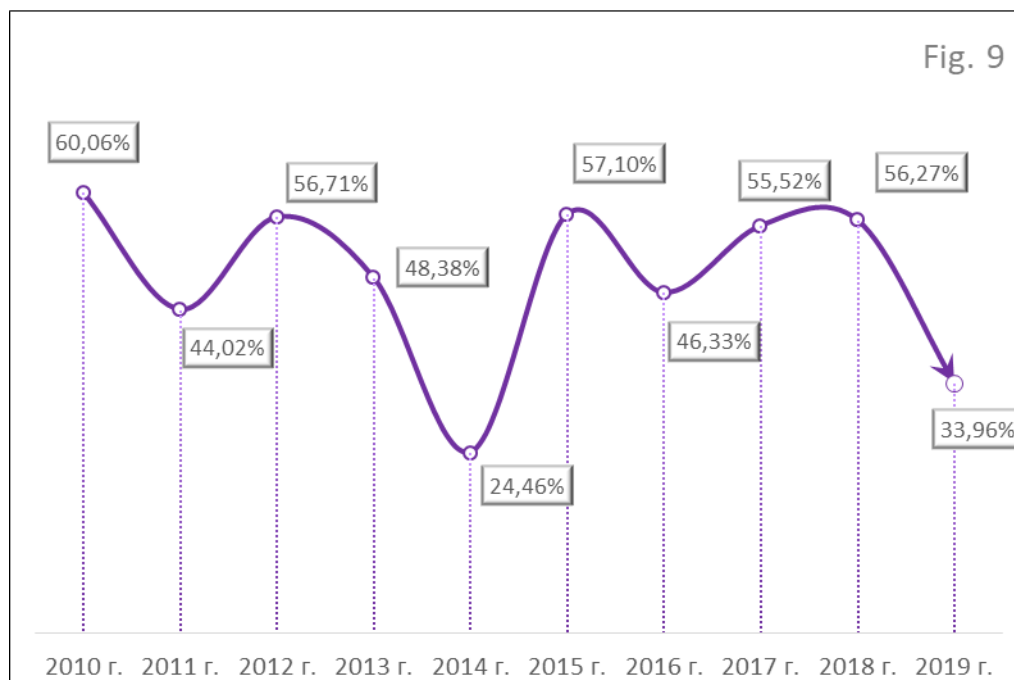
As a result of the application of special investigation techniques in 2019, 1,124 physical evidence were prepared¹⁴, (in 2018 they were 1,714; 2017– 1,670; 2016 – 1,431; 2015 – 1,677; 2014 – 1,084; 2013 – 1,602; 2012 – 3,347; 2011 – 3,603 and in 2010 – 3,461). (Fig. 8)



¹³ According to the data of the bodies under Art.20 of the Special Investigation Techniques Act.

¹⁴ According to the data of the bodies under Art.20 of the Special Investigation Techniques Act.

The ratio between the number of prepared physical evidence and the number of persons with fundamental rights temporarily restricted by special investigation techniques is 33.96 %¹⁵. For comparison, in 2018 this ratio is 56.27 %, in 2017 – 55.52 %, in 2016 – 46.33 %, in 2015 – 57.10 %, in 2014 – 24.46 %; in 2013 – 48.38%, in 2012 – 56.71%; in 2011 – 44.02% and in 2010 – 60.06 %. (Fig. 9).



The analysis shows that as a result of the actions taken by the National Bureau of Control of Special Investigation Techniques and the instructions and recommendations given during the inspections, the applicants specify the information they want to be used to compile physical evidence.

The National Bureau intends to request additional information from the structures under Art.13 of the Special Investigation Techniques Act, in order to more accurately and correctly assess the effectiveness of the use of special investigation techniques.

2. Destruction of data not used for physical evidence

In 2019, as a result of the increased control by the heads of the bodies under Art.13 and Art.20 of the Special Investigation Techniques Act, the information, which was not used for the preparation of physical evidence, was destroyed within the statutory term, and only in some cases a delay was allowed.

¹⁵ According to the data of the bodies under Art.20 of the Special Investigation Techniques Act.

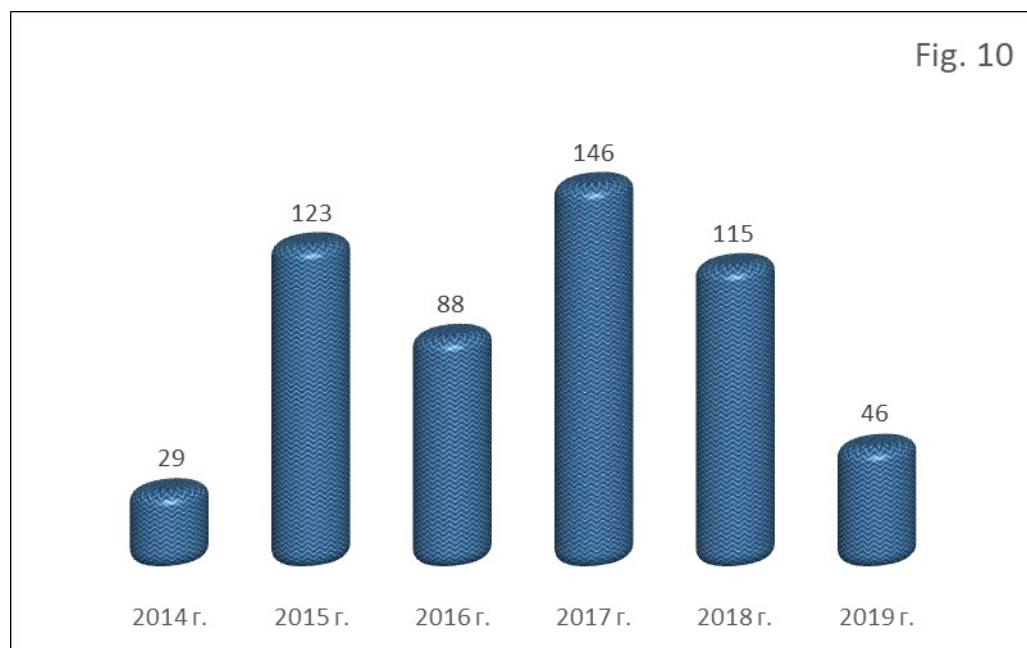
The inspections carried out by the National Bureau of Control of Special Investigation Techniques found that this problem was identified and reflected in the reports from previous years. The analysis shows that the main reasons for its occurrence are the different procedures described in Art.175, para.7 of the Code of Criminal Procedure and Art.31, para.3 of the Special Investigation Techniques Act.

VI. Protection of the rights and freedoms of citizens against illegal application of special investigation techniques

1. Alerts for illegal application of special investigation techniques

In 2019, the National Bureau of Control of Special Investigation Techniques opened 46 files on alerts from citizens to verify the legality of the application of special investigation techniques. 36 of them were inspected by the National Bureau. Ten of the alerts did not meet the requirements according to the Internal Rules of the National Bureau and the National Bureau did not carry out inspections on them. Citizens have been notified to eliminate the irregularities, but they have not taken the necessary action.

For comparison: in 2014 29 files were opened, in 2015 – 123, in 2016 – 88, in 2017 – 146, and in 2018 – 115. (Fig. 10)



In 2019, the Bureau found two cases of illegal application of special investigation techniques (in 2014 four citizens were notified; in 2015 – 10; in 2016 – 5, in 2017 – 1, and in 2018 – no such cases were found).

2. Court cases under the State and Municipal Liability for Damages Act, initiated by citizens under the files of the National Bureau of Control of Special Investigation Techniques

With the entry into force of the amendment to the State and Municipal Liability for Damages Act (SG, issue 17 of 06.03.2009) the responsibility of the state for illegal use of special investigation techniques is realised before a civil court by a special order.

In 2019, five civil cases for illegal application of special investigation techniques were completed.

It should be noted that the Supreme Court of Cassation has established a constant case law in cases under Art.2, para.1, item 7 of the State and Municipal Liability for Damages Act.

The Supreme Court of Cassation accepts the decisions of the National Bureau of Control of Special Investigation Techniques that establish the illegal use of special investigation techniques as official certifying documents issued by a competent authority within its powers, which have material probative value for the facts and circumstances certified in them however, the assessment of illegality contained in the instructions related to the improvement of the regime of use and application of special investigation techniques is obligatory only for the bodies providing and applying these techniques.

The Supreme Court of Cassation considers that such an assessment is not binding on the court hearing a claim for damages, brought by a citizen notified by the National Bureau of misapplication of special investigation techniques against him.

The Bulgarian court also held that the State was liable for damages from the illegal use of special investigation techniques not only when they were applied without permission from the competent authority, but also when such was issued.

In the first place, the court held that even with a properly issued permit, damage occurs to citizens when the accusation is unfounded.

Secondly, the state is responsible even when the permit is issued without the legal prerequisites: for the investigation of a crime for which the use of special

investigation techniques is not admissible, the request is from an unauthorised body or it does not have the required content under Art.14 of the Special Investigation Techniques Act.

The procedure established under the Special Investigation Techniques Act distributes the powers of the state bodies, participants in the process of requesting, authorising and applying special investigation techniques; storing and destroying the information acquired through them.

The court considers that duly legitimised as procedural substitutes of the state are:

- the authority that requested the use of special investigation techniques - when a permit has been issued;
- the body that applied special investigation techniques - when no permit has been issued.

In the period 2014 – 2019, the Bulgarian court ruled on nine cases under the State and Municipal Liability for Damages Act, initiated after the National Bureau of Control of Special Investigation Techniques notified the citizens that special investigation techniques were illegally applied to them.

VII. Conclusions and suggestions

The inspections carried out by the National Bureau of Control of Special Investigation Techniques in 2019 and the working meetings held with the bodies under Art.13, Art.15 and Art.20 of the Special Investigation Techniques Act show that it is necessary to continue efforts to improve the procedures for requesting, authorising and applying special investigation techniques and to store and destroy the information obtained through them.

The main directions of work will be focused on:

- ✓ Providing methodological assistance and organising training to the bodies under Art.13 of the Special Investigation Techniques Act for improving the form and content of the requests for use of special investigation techniques, according to the provisions of Art.14 of the Special Investigation Techniques Act;

- ✓ Increased control in motivating the duration of application of special investigation techniques;
- ✓ Creation of an Electronic Register at the bodies under Art.13, 15 and 20 of the Special Investigation Techniques Act, pursuant to Art.34e, para.2 of the same.
- ✓ Improving the procedure for preparation and storage of physical evidence as well as further development of the legislation by creating a procedure for destruction of physical evidence.

In order to improve the work of the National Bureau of Control of Special Investigation Techniques on citizens' alerts and to increase the transparency in the activity of the bodies applying operational methods, working meetings are planned with representatives of human rights organisations, the scientific community and others involved in the protection of the constitutional rights of the citizens.

Analysing the international practice in this field, it can be categorically concluded that the regulation of preliminary and subsequent control achieved by the adoption of the Special Investigation Techniques Act in restricting the rights of citizens, reproduced in Articles 30-34 of the Constitution not only meets international standards for the preservation of this right, but provides this protection to the maximum extent.

The comparison of Art.8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Art.17 of the International Covenant on Civil and Political Rights to the Special Investigation Techniques Act shows that the latter is much stricter regarding the conditions under which restrictions on the fundamental rights of citizens can be introduced through the use of special investigation techniques and therefore provides more full protection of the same rights.

The Convention stipulates that everyone has the right of protection of his private and family life, his home and the secrecy of his correspondence (Article 8, paragraph 1). State interference in the exercise of this right is inadmissible except in cases provided by law and necessary in a democratic society in the interests of national and public security or the economic well-being of the country, to prevent riots or crimes, to protect health and morality or the rights and freedoms of others (Article 8, item 2).

With the adoption of the Special Investigation Techniques Act, Bulgaria is one of the first countries to introduce the highest European standards. The law has established itself as an effective mechanism for settling the conditions, the procedure for requesting, authorising and applying and controlling the use of special investigation techniques and the results obtained through them, guaranteeing to the maximum extent the constitutional rights of citizens.

The National Bureau of Control of Special Investigation Techniques is preparing an international project on "Strengthening the capacity of supervisors to protect the rights and freedoms of citizens against the illegal use of special investigation techniques", which aims to promote, develop and strengthen international relations between the National Bureau of Control of Special Investigation Techniques and the supervisory authorities of the project partner countries to share knowledge, experience, good practices and achieve common results in the field of protection of citizens' rights and freedoms against illegal use of special investigation techniques by the security and public order services.

The project is expected to be implemented within 12 months. The main activities of the project are aimed at:

- ✓ Review of the activities and main priorities in the work of the National Bureau of Control of Special Investigation Techniques and the supervisory authorities of the other countries, partners in the project, regarding the protection of the rights and freedoms of citizens against illegal use of special investigation techniques by the security and public order services.
- ✓ Assessment of the legislation on the possibilities of citizens and organisations to refer to the respective supervisory bodies for the illegal use of special investigation techniques by the security and public order services.
- ✓ Discussion of good practices regarding the algorithm of performing inspections, their scope and period. Difficulties encountered by supervisors in carrying out inspections by security services.
- ✓ The possibilities for providing information to the public about the results of the inspections, the actions of the competent authorities and institutions and the identified cases of illegal use of special investigation techniques. Informing the citizens whose rights have been violated.

- ✓ Workshops, training of employees and sharing the good practice of the supervisory authorities involved in the project to increase the efficiency of their work related to the protection of the rights and freedoms of citizens against the illegal use of special investigation techniques.
- ✓ Organising bilateral and multilateral international forums, with executives and experts from the supervisory authorities, project partners, to identify short-term and long-term tasks and progress and implementation reports.
- ✓ Formulation of specific recommendations for improving the capacity and efficiency of the National Bureau of Control of Special Investigation Techniques in accordance with the best European practices.
- ✓ Development of a mechanism for sharing information between the supervisory authorities with similar functions for illegal actions of the security services in relation to citizens of the respective country.

This year, the National Bureau will continue to be the driving force behind the processes for further development of the legal framework for the procedure, conditions and deadlines for destruction of physical evidence.

In order to increase the efficiency of the use of special investigation techniques, the National Bureau of Control of Special Investigation Techniques considers it necessary to take systematic measures to increase the administrative capacity of employees directly involved in the procedures for requesting and implementing special investigation techniques. Some of these measures should include seminars, lectures and other similar forms of training to set the same standards for the correct interpretation and application of legal norms. Taking such action will significantly reduce the risk of misuse of special investigation techniques and will largely ensure the protection of citizens' rights and freedoms.

The National Bureau is working on proposals for improving the legal framework of procedures related to special investigation techniques, which will include the discussion of specific changes in the Code of Criminal Procedure and Special Investigation Techniques Act, as well as the need to take organisational measures in the following areas:

- ✓ Clarification of Art.175, para.7 of the Code of Criminal Procedure regarding the procedure and term for destruction of the information obtained through special investigation techniques;
- ✓ Further development of the legal framework regarding the order, conditions and terms for destruction of physical evidence, which have not been used for the needs of the criminal process, in order to limit the possibility to use the information for purposes beyond the ones provided by law;

In 2020, the National Bureau of Control of Special Investigation Techniques will continue to exercise objective and independent oversight, thus we believe that an environment will be created to increase confidence in the security services and law enforcement agencies and find the balance, guaranteeing that the rights of the citizens will be reliably protected.

This 2019 Annual Activity Report of the National Bureau of Control of Special Investigation Techniques was adopted by a decision of a meeting held on 28 May 2020.

28 May 2020
City of Sofia