



**NATIONAL SPECIAL INTELLIGENCE
DEVICES CONTROL BUREAU**

2022

**ANNUAL
REPORT**



The control of intelligence gathering activities and the invasion of citizens' privacy is part of the functioning of a democratic society. The legal provisions providing for judicial prior control and expert independent supervision of these activities ensure the maximum protection of citizens' constitutional rights and freedoms. Notwithstanding the relatively precise procedures described in the Bulgarian SIM Act, a number of gaps, deficits and violations by the SIMA authorities have been identified in the course of oversight by the NSIDCB since its establishment in 2014.

Regular, comprehensive and objective inspections carried out by the oversight body enable the timely identification of emerging issues, divergent practices and interpretations of the law and action to remedy them in order to prevent misuse of SIM.

Notwithstanding the results achieved, new risks and threats to national security, the development of technology and the increasing cooperation between the intelligence structures of the States, present new challenges to the supervisory activity. These can be broadly grouped into the following areas:

- the development of IT technologies and their use by special and intelligence services;
- the legal, operational and technological competences of surveillance authorities;
- continuous improvement of legislation and capacity building of supervisory authorities.

This implies continuous analysis and improvement of methodologies for the supervision of SIM use activities, training of supervisory staff, provision of feedback on the results of the opinions, recommendations and binding instructions issued to the authorities involved in these procedures. By organising workshops, seminars and discussions together with the heads of the security and public order services and the prosecutor's office, a working system will be established, making effective use of the capabilities of modern technologies to ensure reliable protection of national security, national interests, life and health of Bulgarian citizens, while strictly observing the laws and principles of the democratic state.

Sincerely,

Chairperson of NSIDCB

Plamen Kolev

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the left.

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ABBREVIATIONS USED

APO	Appellate Prosecutor's Office
CA	Court of Appeal
SCCA	Specialised Criminal Court of Appeal
SAPO	Specialised Appellate Prosecutor's Office
ME	Material evidence
SCPO	Supreme Cassation Prosecutor's Office
SCCs	Supreme Court of Cassation
MAPO	Military Appellate Prosecutor's Office
MCA	Military Court of Appeal
MDPO	Military District Prosecutor's Office
MC	Military Court
SJC	Supreme Judicial Council
GDCOC	General Directorate Combating Organized Crime
GDBP	General Directorate Border Police
GDNP	General Directorate National Police
c.c.	Civil case
SANS	State Agency for National Security
SIA	State Intelligence Agency
SATO	State Agency "Technical Operations"
SG	State Gazette
ISD	Internal Security Directorate
SCIS	State Commission on Information Security
PTP	Pre-Trial Proceedings
EDPRB	European Delegated Prosecutors in the Republic of Bulgaria
EU	European Union, the Union
BBA	Bulgarian Bar Act
APIA	Access to Public Information Act
PPA	Public Procurement Act
SMLDA	State and Municipalities Liability for Damages Act
JSA	Judicial System Act
SIMA	Special Intelligence Means Act
EC	Electoral Code
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
CCSSAUSMDAECA	Committee for Control of the Security Services, the Application and Use of the Special Means and the Data Access under the Electronic Communications Act, committee in the National Assembly
CCUAAFC	Counter-Corruption and Unlawfully Acquired Assets Forfeiture Commission
CC of the Republic of Bulgaria	Constitutional Court of the Republic of Bulgaria
MoI	Ministry of Interior
MoD	Ministry of Defence
MoJ	Ministry of Justice
NSIDCB, The Bureau, the National Bureau	National Special Intelligence Devices Control Bureau
PC	Penal Code
CCP	Code of Criminal Procedure

NA	National Assembly
DPD	District Police Directorate
DPO	District Prosecutor's Office
OCG	Organized criminal group
DC	District Court
PORB	Prosecutor's Office of the Republic of Bulgaria
RPO	Regional Prosecutor's Office
RC	Regional Court
MPS	Military Police Service
MINS	Military Intelligence Service
SCPO	Sofia City Prosecutor's Office
SCC	Sofia City Court
SPD	Sofia Police Directorate
SpCC	Specialized criminal court
SpPO	Specialized prosecutor's office
SIM	Special intelligence means

The NSIDCB annual activities report has been drafted pursuant to Art. 34b, para. 7 of SIMA. The report was adopted for presentation to the National Assembly by a resolution of the NSIDCB at a meeting held on 25.05.2023.

INTRODUCTION

The Charter of Fundamental Rights of the European Union proclaims that everyone has the right to liberty and security, guaranteeing to all citizens in the European Union respect for their private and family life, their home and the secrecy of their communications. Respect for the right to the protection of personal data is provided for, subject to control by an independent authority. Under Article 52(1), any restriction on the exercise of rights and freedoms must be provided for by law and respect the essential content of the same rights and freedoms. Subject to the principle of proportionality, restrictions may be imposed only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

By its content and given its binding nature, the Charter becomes a document of particular importance for EU citizens, at least because it sets minimum standards in citizens' rights and freedoms.

The amendment of the Council of Europe Convention (ETS No 108) for the Protection of Individuals with regard to Automatic Processing of Personal Data increases the level of data protection. The Convention further refines the principle of lawful processing to further protect special categories of data by providing additional safeguards for individuals when their personal data are processed. It introduces new rights for data subjects, such as the right not to have a decision significantly affecting the data subject taken solely on the basis of automated processing, the right to object to processing, and the right to a remedy in the event of a breach of the individual's rights.

Exceptions are allowed where provided for by law, respecting the essence of fundamental rights and freedoms and constituting a necessary and proportionate measure in a democratic society for:

✓ *the protection of national security, defence, public safety, important economic and financial interests of the State, the impartiality and independence of the judiciary, or the prevention, investigation and prosecution of criminal offences and the enforcement of criminal penalties, as well as other essential public interest objectives;*

✓ *the protection of the data subject or the rights and fundamental freedoms of others, in particular freedom of expression.*

In addition to the exemptions permitted in paragraph 1 of Article 11 of the Convention are in respect of processing activities for national security and defence purposes. A country may provide by law, and only to the extent that it constitutes a necessary and proportionate measure in a democratic society to achieve such a purpose, for exceptions to Articles 4(3), 14(5) and (6) and 15(2)(a), (b), (c) and (d).

This is without prejudice to the requirement that processing activities for national security and defence purposes are subject to independent and effective review and supervision in accordance with the domestic law of the country concerned.

The Constitution of the Republic of Bulgaria guarantees the privacy, home, freedom and secrecy of citizens' correspondence and communications, except in the cases provided for by law (Articles 32, 33 and 34). The limitation of these fundamental rights shall be permissible only temporarily where this is necessary for the prevention and detection of serious intentional offences expressly referred to in Article 3 (1) of the SIMA or in respect of activities related to the protection of national security (Article 4 of the SIMA).

The main objective of SIMA is to ensure a balance between the fundamental constitutionally recognised rights of citizens on the one hand and the protection of security and the prevention, detection and investigation of crime on the other.

International and European standards, as well as the decisions of the European Court of Human Rights, require and promote transparency with regard to SIM enforcement procedures in order to create safeguards against arbitrary actions by state structures.

This report on the activities of the National Bureau aims to inform the National Assembly and the public on the activities of the NSIDCB in 2022. Publication on the National Bureau's website enhances transparency in the work of agencies in using SIM to prevent and detect crime and protect national security. The report contains statistics on the number of persons to whom SIMs have been applied, requests made, authorisations granted and operational modalities applied, presented in tables and charts as follows:

- ✓ *summary data on the procedures for requesting, authorizing, applying and using the SIM, on storing and destroying the received information and on the prepared MEs;*
- ✓ *analysis of the results and problems identified during the inspections and recommendations for their elimination;*
- ✓ *information on the activity of protecting the rights and freedoms of citizens;*
- ✓ *information in the field of international cooperation and the interaction with the relevant committee in the National Assembly and with state bodies and non-governmental organizations.*

The report presents in summary form the organization of work, the results achieved by the National Bureau, initiated proposals for legislative changes related to the improvement of SIMA and CPC procedures, as well as inter-institutional workshops held and participation in international forums in 2022. The activity is reported in nine sections. The data are analysed in summary form and by main areas, with comparisons with previous years, indicating relevant conclusions, recommendations and trends. Priorities for the work of the NSIDCB are highlighted in the final section.

The monitoring of procedures is carried out by carrying out inspections of the authorities under Article 13, Article 34n, Article 15 and Article 20 of SIMA, according to a methodology developed and validated in order to guarantee the protection of the rights and freedoms of citizens against the unlawful use of SIM.

The checks carried out play a key role in assisting law enforcement and law enforcement authorities and protecting citizens' rights and freedoms against the unlawful use of SIM.

The main purpose of monitoring and control is to assess the actions of the relevant authorities in making requests for SIM use, issuing authorisations or refusals and giving enforcement orders. Verification should assess the actions of the relevant authorities in storing, destroying and using the information obtained through the SIM. It should be established that the protection of citizens' rights and freedoms against the unlawful use of SIMs is guaranteed.

In the course of monitoring and control, a set of measures is being implemented, with the aim of completeness, comprehensiveness and versatility of actions, with a view to avoiding omissions and the possibility of verifying the data and facts established, as well as improving the activities of the authorities and analysing the legal framework with a view to developing proposals for its improvement and alignment with European best practices.

An important objective for the current composition of the NSIDCB is to maintain a good inter-institutional dialogue with the legislative, judicial and executive authorities, as well as with the non-governmental sector, in order to consolidate and improve the good practices established since the establishment of the NSIDCB.

The actions of the authorities using SIM must be fully lawful in order to build public confidence in their activities. A balance between security and rights, as well as constitutional and statutory guarantees of permissible intrusion into legally protected privacy, subject to the principles of legality, proportionality and necessity, are a sine qua non and in the interest of a democratic society.

I. COMPOSITION OF NSIDCB. MEETINGS AND ADOPTED DECISIONS

On 21.12.2018, by decision of the 44th National Assembly, the Chairperson of the NSIDCB, Vice-Chairperson and three members were elected for a term of 5 years. Since the second half of 2021, the National Bureau has been operating with an incomplete staff: Chairperson Plamen Kolev and members – Ognyan Atanasov, Iliya Ganev and Ognyan Stoichkov.

In 2022, the NSIDCB held 43 meetings. A total of 741 decisions have been adopted and the following have been prepared by the Specialized Administration Sector:

- ✓ Reports of due diligence, thematic and random inspections.
- ✓ Reports on representations received or issues raised by SIMA authorities relating to SIM request, authorisation or enforcement procedures, storage and disposal of information collected through them.
- ✓ Opinions relating to proposed changes to existing legislation.

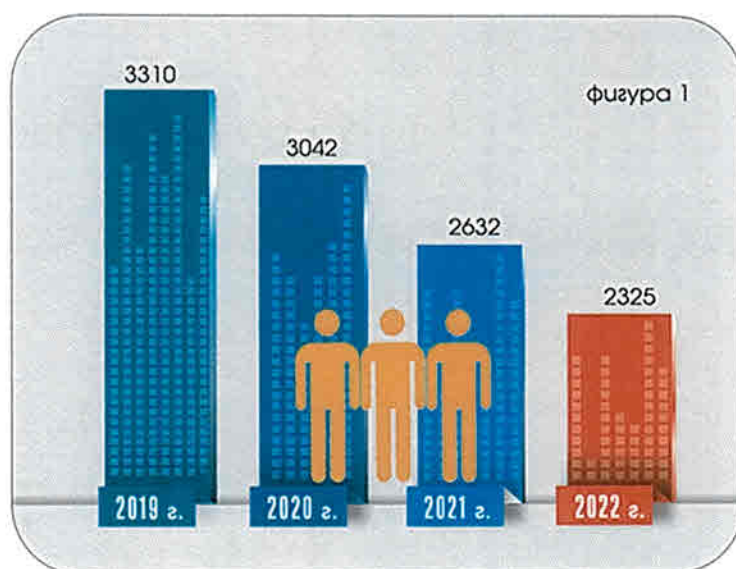
II. PROCEDURES PURSUANT TO SIMA

1. Bodies under Article 13 of SIMA. Requests. Substantive legal bases for the use of SIM.

The authorities referred to in Article 13 of SIMA shall have the right to use SIM in accordance with their competence.

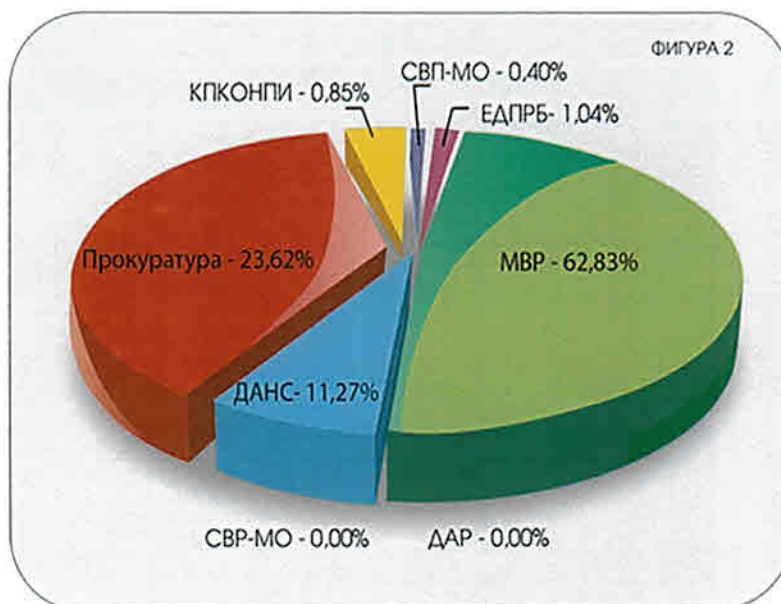
1.1. Requests.

In 2022, SIM was used for 2325 persons. For comparison: In 2021 there were 2,632 persons, in 2020 3,042 and in 2019 3,310 (Fig. 1)



In 2022, the relative share of applicants in the total number of procedures initiated was:

MoI – 62,83 %, PORB – 23,62 %, SANS – 11,27 %, CCUAAFC – 0,85 %, EDPRB – 1,4 %, MPS – MD – 0,40 %, MIS-MD – 0,00 %, SIA – 0,00 %. (Fig. 2)

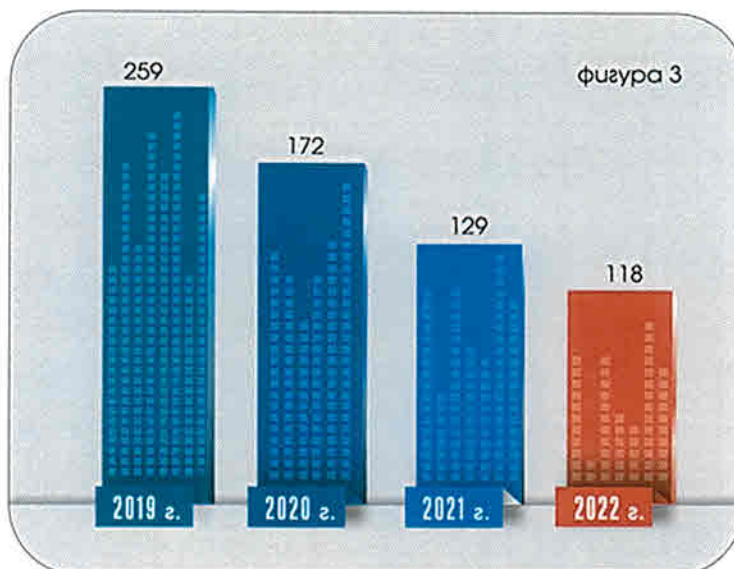


Structure	Relative share of procedures compared to previous years, percentage (%)			
	2022	2021	2020	2019
MoI	62.83	53.08	51.12	53.73
PORB	23.62	33.86	36.98	37.95
SANS	11.27	10.02	7.28	5.69
EDPRB	1.04	0.09	-	-
CCUAAFC	0.85	0.59	3.48	2.43
MPS-MD	0.40	0.02	0.22	0.20
MIS-MD	0	0	0	0
SIA	0	0	0	0

A comparison of the data shows that the procedures initiated by the MoI authorities and the Prosecutor's Office account for more than 86 % of the total.

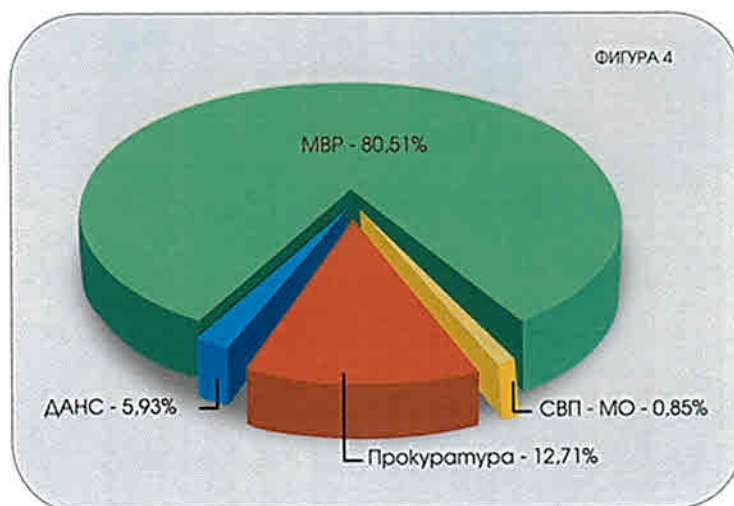
In 118 cases¹, SIM was used in respect of subjects for the identification of persons for whom there was evidence and reason to believe that they were preparing, committing or having committed a serious intentional crime as listed in the Act (Article 12 (1) (4) of SIMA) (Fig. (Fig. 3)

¹ According to data of the bodies under Article 20 of SIMA.



Comparing the data over the last few years, there has been a decrease in cases using this procedure.

In 2022 the procedures under Art. 12, para. 1, item 4 of SIMA are distributed among the authorities under Art. 13 of SIMA in the following ratio: Ministry of Interior – 80.51% (vs. 74.42% in 2021, 85.78% in 2020, 85.82% in 2019); Public Prosecutor's Office – 12.71% (vs. 24.03% in 2021, 12.28% in 2020, 13.70% in 2019); SANS – 5.93% (vs. 1.55% in 2021, 1.78% in 2020, 0.48% in 2019); SVP-MO – 0.85% (0% in 2021). (Fig. 4)



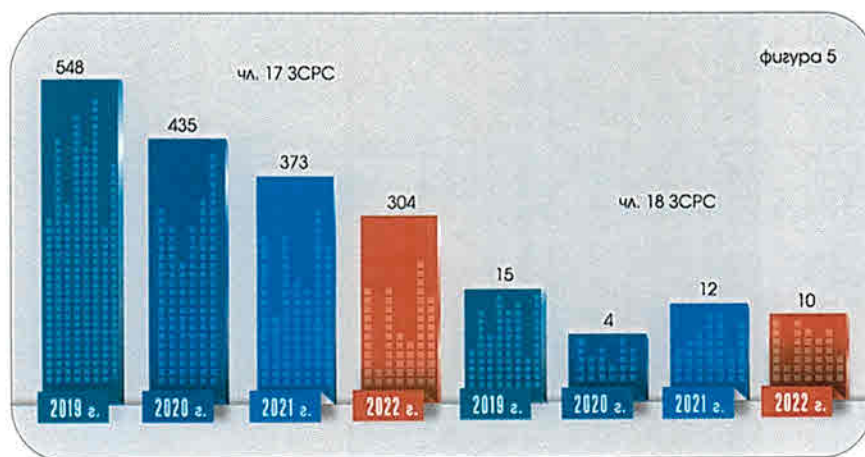
As evident from the chart, it is the MoI authorities which use SIM most frequently in order to identify persons and detect offenders.

In 2022, according to 304 procedures (13.08% of the total number), the application of the SIM has started according to the order and under the conditions of Art. 17 of SIMA (for comparison: 373 procedures or 13.51% in 2021, 435 or 14.38% in 2020, 548 or 16.56% in 2019).

In individual cases, it was found that the assumption of Article 17 of the SIMA was used to speed up the launch of the SIM application procedure.

Given the findings of the National Bureau reflected in the 2021 report, instructions have been given to refine the use of this special procedure. As a result of the instructions given, the cases in which the application of the SIM is requested in the assumption of Article 17 of the SIMA have been reduced and the grounds for immediate initiation are expressly stated.

In 2022, in 10 procedures (0.39% of the total), implementation was initiated under the terms of Article 18 of SIMA (12 procedures or 0.43% in 2021, 4 procedures or 0.13% in 2020, 15 procedures or 0.45% in 2019). (Fig. 5)



In 2022, 4,331 requests were made under procedures against 2,325 persons and 118 sites. This compares with 2,761 procedures on 4,580 requests in 2021, 3,196 procedures on 5,368 requests in 2020 and 3,569 procedures on 6,039 requests in 2019.

It can be seen from the data that over the last four years, procedures and requests have decreased. Compared to 2021, procedures decreased by 318 and requests decreased by 249, compared to 2020 procedures decreased by 753 and requests decreased by 1037, and compared to 2019 procedures decreased by 1126 and requests decreased by 1708.

Analysis of the statistics and the findings of the NSIDCB inspections lead to the conclusion that the number of persons against whom SIMs are used has been decreasing in recent years. In 2022, the largest decrease was in requests for detection of offences committed by OCGs and those under Chapter One of the Special Part of the Penal Code, which were under the jurisdiction of the SpCC until its closure on 27.07.2022. At the same time, the authorities under Article 15 of SIMA have increased the criteria with regard to compliance with the requirements of Article 14(1) of SIMA in making the requests for use of SIM.

1.2. Substantive legal bases for the use of SIM.

The use of SIM is admissible to detect only serious intentional offences expressly referred to in Article 172 (2) of the CCP and in Article 3 (1) of SIMA.

In 2022, SIM was used most frequently for offences under Article 321 of PC (OCG) — 974 cases; Article 354a of PC (narcotic drugs) – 852 cases. Article 234 of PC (excise goods) – 126 cases, Article 195 of PC (theft) – 176 cases, Article 301 of PC (bribery) – 145 cases, Article 242 of PC (offences against the customs regime) – 82 cases, pursuant to Chapter One of the Special Part of the PC – 155 cases.² (Fig. 6)

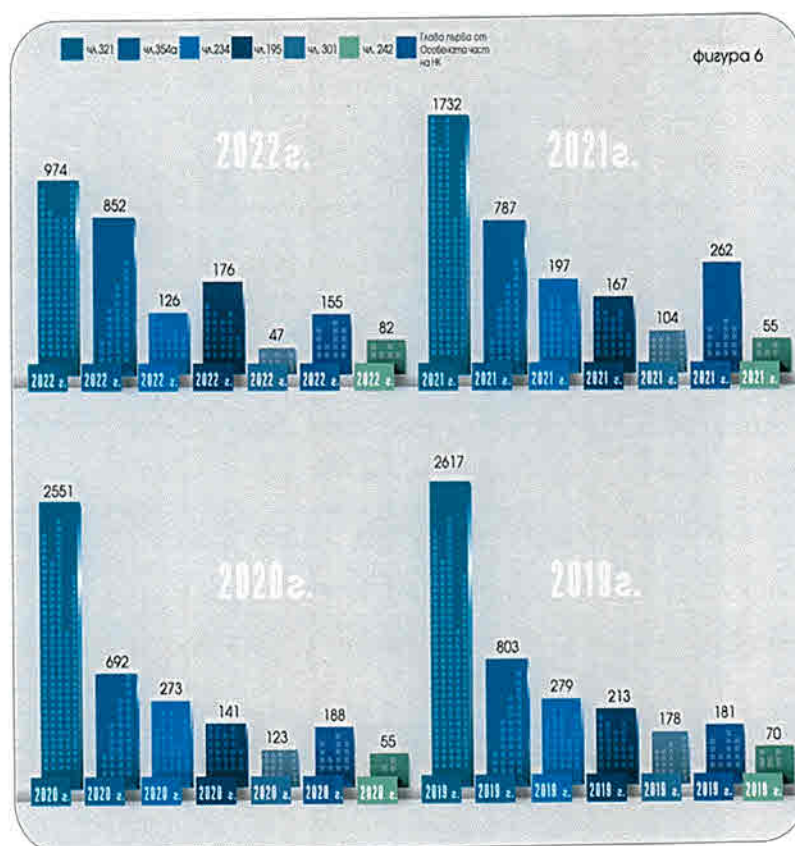


Fig. 6. The use of SIM to detect violent intentional crime for the period 2019-2022

In 2022, authorities referred to in Article 13 of SIMA used SIM most frequently to detect offences under Article 321 and 354A of the Penal Code, accounting for over 52% of total SIM authorizations, 974 authorizations under Article 321 of the Penal Code and 852 authorizations under Article 354A of the Penal Code, respectively.

For the detection of offences under Article 195 of the Penal Code, Chapter One of the Special Part of the Penal Code, under Article 234 of the Penal Code, under Article 242 of the Penal Code and under Article 301 of the Penal Code, the SIM authorisations granted ac-

² According to data of the bodies under Article 15 of SIMA.

counted for about 17%. 176 authorisations under Article 195 of the Penal Code, 126 authorisations under Article 234 of the Penal Code, 82 authorisations under Article 242 of the Penal Code, 47 authorisations under Article 301 of the Penal Code and 155 authorisations under Chapter One of the Special Part of the Penal Code were granted,

Compared to the previous four years, the use of SIMs for the detection of offences under Article 354a of the Penal Code has increased: in 2022, the increase is 8.26% compared to 2021, 23.12% compared to 2020 and 6.1% compared to 2019.

For the last four years there has been a steady downward trend in the number of SIM used in the investigation and detection of crimes under Article 321, Article 301 and Article 234 of the Penal Code.

The crimes for which SIM were most frequently requested and authorized during the period 2019-2022 are as follows:

Crimes under the Penal Code	2022	2021	2020	2019
Art. 354a	852	787	692	803
Art. 321	974	1732	2551	2617
Art. 301	47	104	123	178
Art. 234	126	197	273	279
Art. 242	82	55	55	70
Art. 195	176	167	141	213
Chapter One of the Penal Code	155	262	188	181

For offences under Chapter One of the Special Part of the Penal Code, SIM authorizations increased between 2019 and 2021 and decreased by more than 40% in 2022 compared to 2021.

For the offences under Article 195 of the Penal Code, in the period from 2020 to 2022, SIM implementation authorisations have increased and decreased by 17.38% compared to 2019.

For offences under Article 242 of the Penal Code, there was a decrease in SIM use in 2020 and 2021 compared to 2019 and an increase in 2022 compared to previous years.

2. Bodies under Article 34n of SIMA.

According to the provision of Article 34n of the SIMA, upon receipt of a request for legal assistance from a foreign state requesting the continuation of cross-border surveillance from the territory of another state to the territory of the Republic of Bulgaria by officials of the requesting state, the SCPO shall rule on the request and, if it accepts it for execution, shall

submit a written reasoned request for authorization to the Chairperson of the SCC or to the Deputy Chairperson authorized by him.

In 2022, there are no SIM request, authorization, and enforcement procedures under Article 34n of SIMA. One of the reasons for this may be the mixed practice reflected in previous reports on authorising the application of SIM at the request of foreign investigative authorities. This is due to the specificity of each individual case, as well as the different legislation in this area in EU countries – a difference in the crimes for which it is permissible to apply SIM.

The provisions of Article 34n of the SIMA introduce procedures that are set out in Article 40 of the Schengen Agreement, but do not cover all cases in which the application of a SIM is required at the request of foreign law enforcement authorities.

In this respect, it is necessary to improve the legislation and to provide a clear and precise procedure for the application of SIM on the territory of the country upon receipt of a request from the relevant foreign state entities, in order to avoid violating national legislation and at the same time not obstruct the investigation of a crime.

3. European delegated prosecutors.

By an amendment to the JSA in 2022, the European Public Prosecutor and the European Delegated Prosecutors were given an independent status outside the PORB and on this basis they were included as authorities under Article 13(2) of SIMA (Article 173(1) of the CPC).

In 2022, 44 requests for the use of the SIM were made by the EDPRB, 18 of which were refused and 7 were left pending by the competent authority under Article 15 of SIMA – the Chairperson of the SCC or his delegated deputy. The offences for which the application of SIM was sought and granted were under Articles 248A, 254B and 321 of the Penal Code. In 2022, the European Public Prosecutor did not make any requests for the use of SIM.

The due diligence checks carried out on the SIMA procedures did not reveal any deficiencies in the preparation of SIM requests. Several issues remain legally unresolved for the EDPRB:

- how to proceed when a prosecutor from another EU Member State requests the use of SIM – the lack of a prosecution case opened in Bulgaria makes it difficult to substantiate the request before the competent Bulgarian court;
- prosecutors' offices from EU countries send SIMs in respect of Bulgarian citizens, but it is not clear to what extent they can be used in the framework of criminal prosecutions carried out by the relevant Bulgarian institutions.

4. Bodies under Article 15 of SIMA. Permits and refusals.

The requests of the competent authorities are submitted to the authorities referred to in Art. 1 of the SIMA (Art. 174 of the CCP), which should give a reasoned decision within 48 hours.

4.1. Authorisations.

In 2022, the authorities referred to in Article 13 of SIMA exercised their right to request the use of SIM by submitting a total of 4331 requests for persons and subjects to the authorities referred to in Article 15 of the SIMA. Of these, 3562 were granted (2588 initial requests and 974 extension)³.

For comparison: In 2021, there were 4,580 requests and 4,056 authorisations (2,602 for initial requests and 1,454 for extensions); in 2020, there were 5,368 requests and 5,003 authorisations; in 2019, there were 6,039 requests and 5,396 authorisations. (Fig. 7)

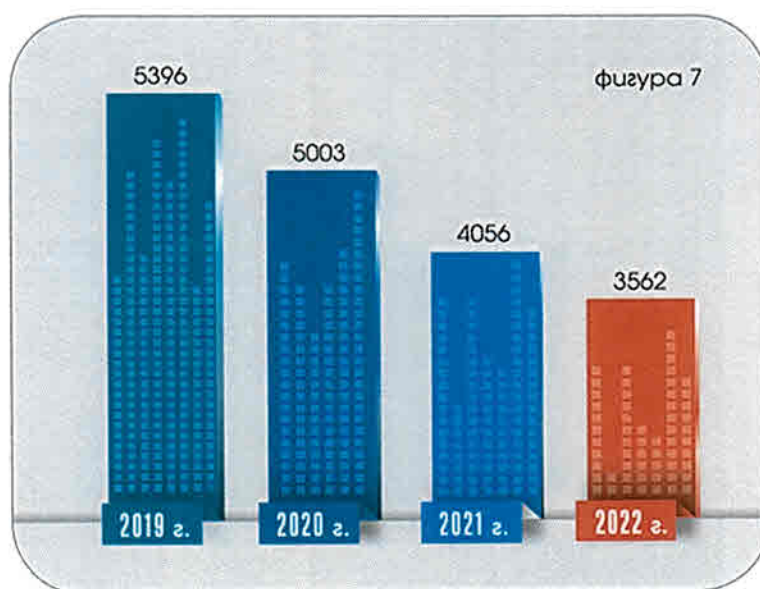


Fig. 7. Authorizations for the use of SIM for the period 2019 – 2022.

In 2022, authorizations decreased by 249 from 2021, resulting in a significant decrease in SIM applied.

³ According to data of the bodies under Article 15 of SIMA.

Court	Number of authorisations	Court	Number of authorisations	Court	Number of authorisations
SpCC	771	DC-Velko Tarnovo	87	DC-Vratsa	23
DC-Plovdiv	404	DC-Haskovo	85	DC-Montana	22
SCC	292	DC – Sofia	77	DC-Silistra	21
DC-Stara Zagora	211	DC-Razgrad	74	DC-Targovishte	17
DC-Blagoevgrad	177	DC-Sliven	66	DC-Smolyan	16
DC-Burgas	167	MC – Sofia	66	DC-Dobrich	13
DC-Kyustendil	162	DC-Kurdjali	57	DC-Sliven	8
DC-Pleven	121	DC-Pernik	55	MdC-Plovdiv	3
DC-Vidin	111	DC-Gabrovo	43	AC – Sofia	5
DC-Pazardzhik	111	DC-Shumen	41	ASCC	0
DC-Ruse	106	DC-Lovech	31	MCA	0
DC-Varna	93	DC-Yambol	26	SCCs	0

And in 2022, until its closure, the SPNC has ruled on the largest number of requests – 1003 or 23.15% of all received in the courts.

4.2. Refusals.

In 2022, judges ruled on 769 refusals of the total number of requests to use SIM⁴ (in 2021 the refusals were 524, in 2020 the refusals were 365, in 2019 the refusals were 643). (Fig. 8)

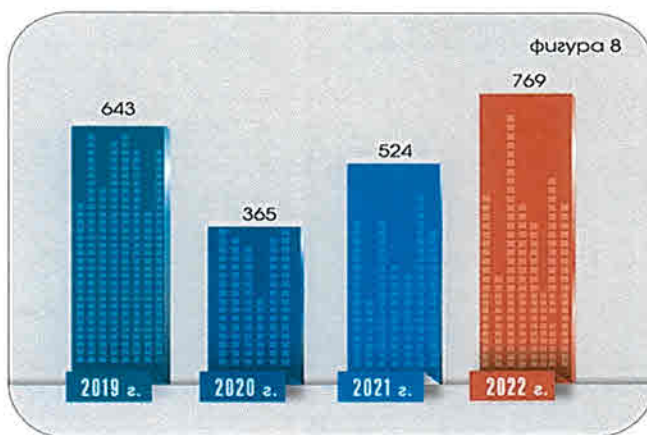


Fig. 8. Refusals for the use of SIM for the period 2019 – 2022.

558 requests were submitted to the SCC and 266 refusals were ruled, which is 47.67%, 1003 requests were submitted to the SpCC during the year and 232 refusals were

⁴ According to data of the bodies under Article 15 of SIMA.

ruled, which is 23.13% of the requests submitted to the court, the DC-Plovdiv received 458 requests and 54 refusals were ruled, which is 11,79 %.

In 2022, the relative share of the rulings on refusals at the request of applicants is as follows:

Structure	Percentage of refusals (%)			
	2022	2021	2020	2019
EDPRB	40.91	0	-	-
SANS	24.69	13.51	7.16	14.75
Prosecutor's Office	20.86	16.31	6.05	9.90
MoI	14.93	8.39	2.87	10.33
CCUAAFC	11.11	0	2.67	20.69

During the year, the judges, exercising their power related to the control of the legality of the SIMA procedures, also issued 208 acts, in which they partially refused the application of operational means, to the elements of crimes not falling under Article 1 of SIMA, or have reduced the time limits requested for the application of SIMA.

5. Bodies under Article 20 of SIMA. Operational means.

According to Art. 20 of SIMA, special intelligence means are provided and applied only by the State Agency "Technical Operations", specialized Directorate "Technical Operations" of the State Agency "National Security", Ministry of Internal Affairs – for the means under Art. 10b and Art. 10c of SIMA, as well as for the method under Art. 10a of SIMA, in cases where an undercover officer is used.

The State Intelligence Agency and the intelligence services of the Ministry of Defense may not possess and use special intelligence means within their competence.

5.1. Operational means.

The total number of operational modalities authorized for application in 2022 is 10436 (in 2021 – 11963 modalities, in 2020 – 14439 modalities, in 2019 – 15719 modalities).

The number of operational means (authorised/applied) by type is as follows⁵:

– Article 5 of SIMA (monitoring) – 3116 (vs. 3496 in 2021, 4255 in 2020, 4585 in 2019), with 1125 (vs. 1229 in 2021, 1372 in 2020, 1628 in 2019) applied;

⁵ According to data of the bodies under Article 20 of SIMA.

- Article 6 of SIMA (wiretapping) – 3331 (vs. 3796 for 2021, 4644 for 2020, 5112 for 2019), with 3300 attached (vs. 3758 for 2021, 4594 for 2020, 5076 for 2019) applied;
- Article 7 of SIMA (tracking) – 3115 (vs. 3500 for 2021, 4262 for 2020, 4593 for 2019), with 1111 attached (vs. 1227 for 2021, 1363 for 2020, 1621 for 2019) applied;
- Article 8 of SIMA (monitoring) – 318 (vs. 439 in 2021, 456 in 2020, 578 in 2019), with 63 (vs. 62 in 2021, 71 in 2020, 68 in 2019) applied;
- Article 9 of SIMA (monitoring) – 172 (vs. 218 in 2021, 257 in 2020, 227 in 2019), with 23 (vs. 19 in 2021, 26 in 2020, 22 in 2019) applied;
- Article 10 of SIMA (inspection of correspondence) – 325 (vs. 434 for 2021, 478 for 2020, 546 for 2019), with 33 attached (vs. 31 for 2021, 39 for 2020, 28 for 2019) applied;
- Article 10a of SIMA (controlled supply) – 1 (vs. 2 in 2021, 3 in 2020, 2 in 2019), with 0 (vs. 2 in 2021, 0 in 2020, 0 in 2019) applied;
- Article 10b of SIMA (trust transaction) – 29 (vs. 39 for 2021, 42 for 2020, 38 for 2019), with 16 attached (vs. 14 for 2021, 16 for 2020, 11 for 2019) applied;
- Article 10c of SIMA (monitoring) – 29 (vs. 39 in 2021, 42 in 2020, 38 in 2019), with 22 (vs. 28 in 2021, 27 in 2020, 18 in 2019) applied; (Fig. 9 and Fig. 10)

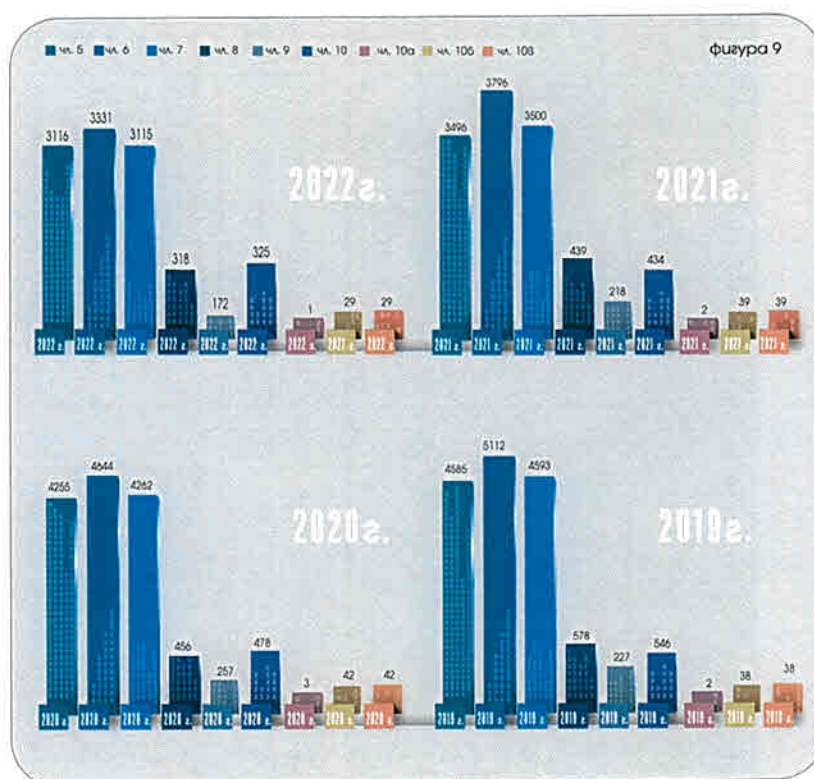


Fig. 9. Operational means requested and authorised for the period 2019-2022

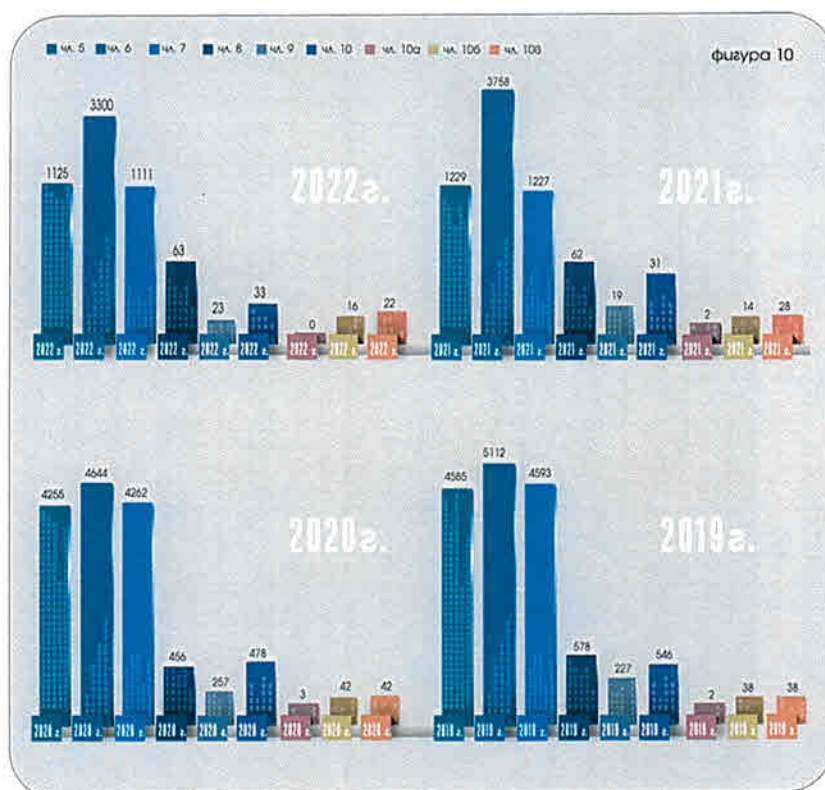


Fig. 10. Operational means applied for the period 2019-2022

In 2022, a total of 5,693 modalities were applied (6,370 modalities in 2021, 7,465 in 2020, 8,472 in 2019)⁶, representing 54.55% of the authorised operational modalities. This compares to 53.25% in 2021, 51.70% in 2020 and 53.90% in 2019.

The analysis of the statistics shows that over the years the highest (almost 100%) is the proportion of applied versus authorised means under Article 6 of SIMA, relatively low (less than 20%) is the percentage of applied versus authorised means under Article 8, Article 9, Article 10 of SIMA. With the exception of 2021, when it was requested and applied on two occasions, the means under Article 10bis of SIMA is practically not used:

Method	Ratio of authorised/applied methods, in %			
	2022	2021	2020	2019
Pursuant to Art. 5	36.10	35.15	32.24	35.51
Pursuant to Art. 6	99.07	99.00	98.92	99.30
Pursuant to Art. 7	35.67	35.06	31.98	35.29
Pursuant to Art. 8	19.81	14.12	15.57	11.76
Pursuant to Art. 9	13.37	8.72	10.12	9.69
Pursuant to Art. 10	10.15	7.14	8.16	5.13

⁶ According to data of the bodies under Article 20 of SIMA.

Pursuant to Art. 10a	0	100	0	0
Pursuant to Art. 10b	55.17	35.90	38.10	28.95
Pursuant to Art. 10c	75.86	71.79	64.29	47.37

The due diligence carried out in 2022 and previous years found that in the mass case the simultaneous use of the means pursuant to Art. 5, 6 and 7 of SIMA and in practice only the method under Article 6 of SIMA is applied.

5.2. Cases where SIM has not been triggered.

During the year, in 26 cases, the authorities referred to in Article 20 of SIMA did not initiate the SIM application due to manifest and factual errors in the requests and authorisations and informed the applicants and authorising authorities thereof. Of these, in 16 cases implementation was initiated after the factual errors identified had been corrected and in the remaining 10 cases implementation was not initiated.

III. NSIDCB ACTIVITY RELATED TO SIMA. MONITORING OF THE PROCEDURES UNDER SIMA.

1. Analysis of the results of the supervision of the procedures under SIMA. Identified gaps and good practices.

1.1. Bodies under Article 13 of SIMA.

In the course of the due diligence carried out in 2022, the following deficiencies were identified:

✓ Preparation of requests by an incompetent authority:

- In the case of pre-trial proceedings, the requests were prepared by the director of the regional directorate of the Ministry of Interior, while the competent authority to request the use of SIM in such cases is the supervising prosecutor;

- for offences under Chapter Three, Article III of the Special Part of the Penal Code, the request is made by a director of a regional directorate of the Ministry of the Interior, and only district prosecutors' offices are entitled to request the use of SIM in such cases.

✓ Submission of requests before an incompetent authority:

The substantive jurisdiction of the court before which the request was made was not respected:

- For offences under Chapter Three, Article III of the Special Part of the Penal Code;

- for the investigation of offences falling within the jurisdiction of the specialised court until its closure on 27.07.2022.

The territorial jurisdiction of the court before which the request was submitted has not been respected. These deficiencies have been identified since the closure of the Specialised Justice Unit with regard to requests for the use of SIM for crimes committed by OCGs or related to human trafficking.

✓ Lack of a full and complete statement of the facts and circumstances giving reason to believe that a serious intentional offence of those listed in Article 1 of SIMA which necessitate the use of the SIM.

✓ Absence of evidence of involvement of the person for whom use of the SIM is sought in the alleged criminal activity.

✓ Lack of identifying information about the persons or objects in respect of whom the use of the SIM is sought, including lack of identification of the objects where the method under Article 8 of SIMA is sought.

✓ Reference in the requests to criminal offences not falling within:

– those listed in Art. 3(1) of SIMA, resp. Article 172(2) of the Criminal Procedure Code, where the use of SIM is requested in respect of persons about whom evidence has been obtained or there are grounds to believe that they are preparing, committing or have committed a serious intentional offence – the request refers to the main article of the Penal Code, which includes several criminal offences, not all of which are serious offences within the meaning of Article 93(7) of the Penal Code;

– those listed in Art. 12(3) of SIMA, resp. Article 173, para. 5 of the CCP, when the use of SIM is requested against a witness in criminal proceedings who has given his consent to it, to establish criminal activity of other persons;

✓ Requests for extension of the period of application of SIM do not indicate the results obtained from the applied SIM on the initial requests.

✓ Lack of reasons for the impossibility of collecting the necessary data by other means.

✓ Lack of declaration:

- of the person referred to in Article 12(2) of SIMA or lack of evidence of danger to the person's life or property despite the existence of a declaration;

- according to Article 173, para. 3 of the Code of Criminal Procedure of an undercover officer.

The above-mentioned deficiencies have provided the basis for the authorities under Article 15 of SIMA to issue SIM refusals. All of them have been identified during inspections

in previous years, NSIDCB has given directions and advice and will continue to work with the administrative heads of the concerned entities to prevent them in future.

Other deficiencies that do not affect the legality of SIMA procedures but which NSIDCB believes should be corrected are:

- ✓ Failure of applicants to provide updates when notified by the implementing entity requesting additional information when:

- a communicator is not being used by the person for whom the SIM is authorized;
 - individual calls of the controlled person are suspected to fall under the hypothesis of Art. 33 par. 3 of the Bar Act;

- it is necessary to set up an organisation to implement the means under Article 5 and Article 7 of SIMA.

- ✓ Request for the application of the means of Article 5, Article 6 and Article 7 of SIMA, and actually apply only the means of Article 6.

- ✓ Failure to indicate in the request the number of the pre-trial proceedings, prosecution file or operational file.

- ✓ Verbatim reproduction of information from applied SIM in a request for an extension of the application period;

- ✓ Indication of a large number of officials authorised to obtain the results of the SIM application.

- ✓ Use of SIM in pre-sentence files – as an extraordinary means of proving the commission of crimes, SIM should be used where there is a proven need, not to obtain operational data on the activities and movements of the controlled person or on his operational links of interest.

- ✓ Termination of the application of SIMA on the basis of Article 22(2)(1) of SIMA (where the intended purpose has been achieved) and the preparation of ME is not required after the results have been obtained.

- ✓ Destruction of information under Article 25 of SIMA by one report for more than one person.

- ✓ Inclusion in the reports referred to in Article 29(7) of information on several procedures.

As a result of the good interaction with the authorities under Article 13 of SIMA, the following good practices have also been identified in the course of inspections carried out by the NSIDCB on individual applicants:

✓ In the MoI, steps have been taken to create an organization to avoid duplication in the use of SIM against the same person by different entities of the Ministry.

✓ NSIDCB held a workshop with the SIMA Article 15 authorities in October 2022 and decisions were taken to standardise SIMA practices, which were shared with the authorities referred to in Article 13 of SIMA. As a result, in requests for the use of SIM to detect or investigate OCGs, in addition to Article 321 of the Penal Code, applicants now also include specific criminal elements for the secondary criminal activity carried out.

✓ As a consequence of the improvement in the work on the organisation and planning of SIM and the instructions given by the NSIDCB, the number of requests to the implementing structure to initiate the application of SIM in the hypothesis of Article 17 of SIMA continues to decrease.

✓ More detailed reports to the Judge are being prepared providing information on the operational modalities used and not used and on the results achieved from the implementation of SIM. The information destruction protocols are attached to these reports. Articles 24 and 25 of SIMA not used in the preparation of SIMA, a second report shall be made to the Judge, after receipt of the report on SIMA, on the destruction of the information referred to in Article 24 of SIMA used in the preparation of SIMA.

✓ In a request for extension of the period of application of SIM in the PTP, received in the District Court after the closure of the Specialised Justice Unit, the prosecutor described in detail the actions carried out to date, including witness interviews, admitted MEs from previous SIM applications, actions carried out in relation to the investigation of the person, operational searches and other actions.

Lessons learnt

Following an analysis of the results of the checks carried out, the NSIDCB considers that the reasons for the irregularities found in the application of SIMA procedures are due to:

- gaps in the implementation of ongoing controls by management;
- unfamiliarity with SIMA and insufficient theoretical training in the planning, preparation and use of SIM, the expected outcomes of departmental operational modalities and in the preparation of SIM requests.

The National Bureau supports the idea and is ready to provide the necessary assistance to the Ministry of Interior Academy to organise training for operational staff in the Ministry of Interior in relation to SIMA procedures.

The National Bureau shall periodically provide the management of the Prosecutor's Office, the Ministry of the Interior and the SANS with information on the shortcomings and

irregularities identified during their SIMA activities during the year in question, with a view to taking measures to remedy them and prevent them from occurring in their future work when using SIM.

Due to the feedback from the SIMA Article 13 authorities and following the directions given by the NSIDCB to comply with the requirements of the Act, most of the deficiencies identified in the previous inspections have been addressed.

The internal departmental control introduced in some structures regarding the use of SIM has led to more precise planning and preparation for the use of this extraordinary and specific method of gathering MEs.

The administrative heads of the relevant entities need to exercise additional control when preparing a request for the use of the modalities under Article 5, Article 7 and especially Article 8 of SIMA, as their application involves planning and execution of the relevant actions by the authorities under Article 13 of SIMA and much more resources by the implementing entities compared to the application of the modality under Article 6 of SIMA.

1.2. Bodies under Article 15 of SIMA.

In carrying out its inspections, the National Bureau has found that each year the judges authorised to grant SIM authorisations are raising their standards in dealing with SIM and increasing judicial scrutiny. Organisation and uniform criteria have been established in dealing with requests and authorising SIM applications. The timely destruction of information which has not been used to produce ME and the preparation of the reports referred to in Article 29 (7) of the SIMA is subject to monitoring. Judicial review ensures that the law is strictly enforced and that citizens' constitutional rights and freedoms are not infringed.

The inspections carried out by the authorities under Article 15 of the SIMA have identified some shortcomings in the granting of SIM authorisations:

- ✓ Granting of SIM authorizations on requests submitted by an incompetent applicant. In these cases, no application was initiated and the authorisations granted were revoked after the deficiencies were identified and the implementing entity notified the court or after the authorising authority self-referred.
- ✓ Authorisation of SIM use by an incompetent court. No account was taken of the relevance of the material or territorial jurisdiction of the court in granting the authorisation.
- ✓ There have been cases of applications made by a competent applicant but refused by the judge because of uncertainty as to the authority of the signatory.

✓ The practice of failing to act within the 48-hour time limit laid down in Article 15(1) of SIMA continues.

✓ Granting SIM authorisations without stating the legal qualification in the judge's order.

✓ Granting permissions to use the SIM to detect or investigate OCGs without describing the secondary criminal activity specified by the applicant. A meeting held with the authorities under section 15 of SIMA revealed that this practice has been corrected.

✓ Leaving requests for the use of SIM without consideration instead of ruling on them.

✓ There were isolated cases of:

- refining (supplementing) the criminal offences by specifying the paragraphs of the relevant articles of the Penal Code;

- authorisation granted as the court has not ruled on one of the articles of the Penal Code requested by the applicant – neither permission was granted nor the request was refused;

– correction in the application of a legal qualification outside the scope of Article 3(1) of SIMA, instead of ruling a refusal under the relevant article of the Penal Code.

The National Bureau has also found the following good practices in its inspections of Article 15 of SIMA:

✓ Deduction of time limits for the use of SIM in subsequent requests on the already identified person, when the procedure under Art. 12 para. Article 12(1)(4) of SIMA.

✓ Deduction of the time limits for the use of a SIM where, for the same person and for the same offence, the SIM has been authorised by the authorising authority at the request of another applicant.

✓ Requiring applicants to set out in the reasons for the request for the use of SIM the reasons for each of the means requested and the length of time requested for the use of SIM.

✓ Authorisations shall specify the start and end date for SIM use, including the start and end time of the application.

✓ Applicants are required, in addition to giving reasons for the time limits, to indicate in the request what results are expected to be achieved by the application of the SIM.

✓ Requiring applicants to submit detailed reports under Article 29(7) of SIMA.

✓ Granting refusals where it is found that another authority has been granted permission to use SIM under Article 13 of SIMA.

Lessons learnt

It has been established that, at the initiative of the Article 13 SIMA authorities and following coordination with the court, the problem of issuing refusals due to uncertainty as to the competence of the applicants has been overcome.

As a result of the joint meeting between the SIMA Article 15 Authorities and the NSIDCB in October 2022, we report a convergence of practices with respect to the requirements for SIMA Article 13 Authorities in the reasoning of use requests and in the granting of SIM application authorisations.

1.3. Bodies under Article 20 of SIMA.

In the course of the due diligence checks carried out on the implementing authorities for the whole of 2022, the following cases were identified where SIM implementation under Art. 3 of SIMA:

✓ by the SATO as SIM enforcement authority under Art. 20 para. 20(1)(1) of SIMA – 25 cases:

- on SIM implementation authorisations received for a period longer than the statutory six months in total, pursuant to Article 21(2)(3) of SIMA. This is due to a difference in the calculation of the time limits, where the authorisation to extend the SIM application period is granted from the date following the end date of the previous authorisation. The SATO shall terminate the SIM application early on the last day of the permissible period and shall notify the applicant and the adjudicator in writing, pursuant to Article 22(4) of SIMA, giving reasons why it has terminated the application.

This provides further assurance that SIMs are applied within the strict time limits set by the legislator under s 21 of SIMA;

- SIM authorisations received with manifest errors of fact in the SIM application or authorisation.

In cases where manifest errors of fact have been identified, the Chairman of SATO, or the Deputy Chairperson authorised in writing by him, as the authority referred to in Article 16(1) of SIMA, has not ordered the commencement of the SIM application. The implementing body has notified the applicants and the judges in writing of the apparent factual errors identified and what they consist of – most commonly a misspelling of the identifying details of the person or object to whom SIM application is authorised, a misspelling of the uniform civil number of the person subject to SIM application, a misspelling of a communicator number, etc.;

- incompetence of the authority referred to in Article 15 of SIMA entitled to authorise the SIM application.

Authorisations granted by an incompetent authority under s. 15 of SIMA for the application of SIM in respect of officials within the meaning of Article 93(1) of the Penal Code – pursuant to Article 411a(1)(4) (a) – (k) of the Criminal Procedure Code, the cases of first instance were subject to the jurisdiction of the SpCC (until the abolition of the Specialised Justice System) and the authorisations for the application of SIM should have been granted by the Chairperson or the Vice-Chairperson authorised in writing by the Chairperson instead of by an authority under Article 15 of SIMA under territorial jurisdiction.

There is no provision in the Act for enforcement not to commence upon receipt of a permit granted by an incompetent court or upon the determination of an application for the use of SIM made by an incompetent applicant. The implementing structure, in order to avoid violation of the law, uses the legal form of Article 22(3)(2) of SIMA, namely, a finding of manifest error of fact in the request of the authority referred to in Article 13 of SIMA or in the authorisation of the judge. In the cases found of authorisations granted by incompetent authorities under Article 15 of SIMA, no SIM application was initiated, of which the applicants and the judges granting the authorisations were informed in writing. On receipt of the notifications from the SATO with the reasons given, the authorities under Article 15 of SIMA immediately revoked their judicial orders;

- one case was also found where permission was granted to apply SIM on a request made by an incompetent applicant.

The authority referred to in Article 16(1) of SIMA, again referring to the legal form of Article 22 (3)(2) of SIMA – a manifest error of fact in the authorisation, has informed the applicant and the court in writing. In this case also, no application was initiated and the rights of the citizen were not violated.

✓ The Ministry of Interior as the SIM enforcement authority under Article 20(1)(3) of SIMA – 1 case. The reason for not initiating the application was that for the requested application of the procedure under Art. 10b and 10c of SIMA, there was no declaration under Article 173(3) of the Code of Criminal Procedure by the undercover officer. The authority under Article 16(4) of SIMA has not given any written order for the application of SIM.

The National Bureau considers that consideration should be given to the need to align SIMA and the CCP on the procedure applicable to the undercover officer. In making a request for the use of SIM in an operational case by the application of the modalities of Article 10b and Article 10c of SIMA, some authorities under Article 15 of SIMA do not refer to

the provisions of the Code of Criminal Procedure and do not require the submission of a declaration under Article 173(1) of CCP.

Lessons learnt

The due diligence checks carried out found that the authorities referred to in Article 20 of SIMA were fulfilling their obligations under SIMA.

It should be noted that the SATO has established a practice, where it is found that a SIM-authorized communicator is not being used by a SIM-controlled person, to send notifications of this fact not only to the applicant but also to the authority referred to in Article of SIMA– for further judicial review.

This practice has also been imposed in respect of calls where there is a suspicion that they are made to persons practising freelance as lawyers and would fall within the provision of s. 33(1). 3 of Art.

From the checks carried out, it was found that following the directions issued by the NSIDCB, the authorities under Article 13 of SIMA take action under Article 23 of SIMA to provide up-to-date details of the user of the communicator or where it is suspected that the communicators are being used by lawyers in connection with their professional activities.

Pending receipt of up-to-date information, the applying entity shall continue to apply SIM but shall not send the information received to the applicant.

In cases where information that a communicator would fall under the hypothesis of Article 33 (3) of the Bar Act is confirmed, the implementing body shall immediately destroy the information received in accordance with Article 31(3) of SIMA.

The applying body is limited by law and is not entitled to refuse the application of a SIM where the request for the use of a SIM is made by an incompetent applicant or the authorisation for the application of a SIM is granted by an incompetent court. Legislation to address this gap would overcome the use of the only form of legislation currently available to the implementing structure under Art. 22(3)(2) of SIMA – a finding of manifest error of fact in the authorisation.

2. Opinions and instructions to the authorities under Art. 13, Art. 15 and Art. 20 of SIMA, related to the improvement of the regime for the use and application of SIM.

Closure of the specialised justice system

In relation to the provisions of the Judicial System Act which abolished the Specialised Justice System, the National Bureau issued instructions and issued opinions to the admin-

istrative heads of the bodies referred to in Articles 13, 15 and 20 of SIMA to take action in relation to the procedures for requesting, authorising and implementing SIM, providing the results of implemented SIMs, storing and destroying the information acquired through them, etc.

The directions were agreed with the Minister of Justice, the Chairperson of the SCCass, the Deputy Chairperson of the SCCass heading the Criminal Division, the Chairperson of the SAC, the Chairperson and Deputy Chairperson of the SCC.

During the due diligence exercise for 2022 the National Bureau found that the authorities had complied with the instructions given to them in sending and receiving files and cases where SIMA procedures were applied by the specialised justice authorities.

Directions in relation to the 2022 general election for Members of Parliament

In connection with the 2022 MP elections, the National Bureau has issued directions to the authorities under Article 13 of SIMA that the competent authority under Article 15 of SIMA in respect of candidates for election as Members of Parliament shall be the SCC unless the special rules of Chapter Thirty One of the Code of Criminal Procedure apply.

Guidelines on the use of results of applied SIM according to the order of SIMA in administrative procedures

On the basis of inspections carried out regarding the use of results of applied SIM under the order of the SIMA in administrative procedures and procedures under the order of the CIPA, the National Bureau gave instructions to the research bodies under the CIPA, that according to the provision of Article 11(4)(2) of CIPA, SIM may be applied and used in accordance with the SIMA only for persons applying for permission to access classified information with a security classification level of "Top Secret". The results obtained from the application of SIM for the prevention, detection and proof of any of the offences listed in Article 3(1) of SIMA, or for the protection of national security, may not be used in procedures under the CIPA for security clearance or in other proceedings, including the imposition of administrative penalties.

The State Information Security Commission has been informed of the mandatory instructions issued to the authorities using SIM.

IV. RESULTS OF SIM APPLICATION, STORAGE AND DESTRUCTION OF ACQUIRED INFORMATION.

1. Material evidence.

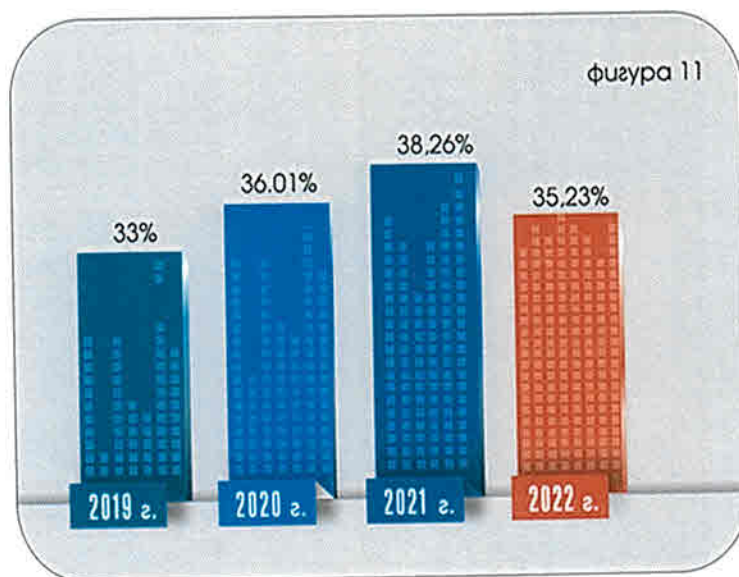
The checks carried out in 2022 and the statistical results obtained show that 819 SIMs were issued from the procedures applied during the year to 2,325 persons and 118 sites.

From the SATO, which has applied 5175 operational means in respect of 2109 persons and 111 sites, applicants have requested the preparation of 744 ME.

From the SANS, which has applied 480 operational methods in respect of 216 persons and 7 sites, the applicants have requested the production of 55 ME.

From the Ministry of the Interior, which has applied 38 operational methods in respect of 17 persons, the applicants have made 20 requests for the production of ME through questioning before a judge.

The ratio between the number of ME produced and the number of persons temporarily restricted by SIM basic rights is 35.23 %. For comparison: In 2021 this ratio is 38.26%, in 2020 – 36.01%, in 2019 – 33.96%. (fig. 11)



In 2022, the trend of decreasing number of VIDs will continue. For comparison: In 2022 they are 819, in 2021 – 1007, in 2020 – 1089, in 2019 – 1124.

Following an analysis, it can be concluded that this trend is the result of both a reduction in the number of procedures applied and a refinement by applicants of the cases in which their preparation is requested. On the other hand, for national security purposes, the outcome of the use of SIM is not always linked to the production of a ME.

The analysis of the reasons for the decrease in the number of SIMs produced in 2022 should also take into account the closure of the specialised justice system.

As in previous periods, a reduction was found, but there are still cases where ME prepared by bodies under Article 13(1) of SIMA are not included in pre-trial proceedings. The main reasons for not using ME for criminal proceedings are that:

- ✓ at the time of their preparation, the criminal prosecution has ended (with a decree refusing to initiate criminal proceedings, a decree to terminate criminal proceedings or an agreement between the prosecution and the accused);
- ✓ the prosecutor refused to add the prepared ME to the evidentiary material because the applicant did not specify the information necessary to prove the criminal activity.

In accordance with Article 3(2) of SIMA, SIM are used for the preparation of ME. In many cases, where information has been obtained from an annexed SIM and the application has been terminated because the intended purpose has been achieved, the applicants do not request the production of a ME on the grounds that important operational information has been obtained.

Due to the lack of a procedure, time limit and conditions for their storage and destruction in the legislation in force, currently the prepared SIM are stored by the authorities referred to in Article 13(1) of SIMA until pre-trial proceedings are initiated, and after the initiation of pre-trial proceedings – by the judicial authorities, indefinitely.

The ME prepared and sent to the judge who authorised the application of the SIM shall be kept in the private criminal case opened by him indefinitely and shall also not be destroyed.

In order to address the issue relating to the retention and destruction of ME, the NSIDCB National Bureau has tabled proposed legislative amendments in the 44th and 47th National Assemblies.

2. Destruction of information, not used for preparation of me and preparing a report to the body referred to in Article 15 of SIMA

2.1. According to the provision of Article 31(3) of the SIMA, the information referred to in Article 24 of the SIMA, which is not used to produce ME, and the information referred to in Article 25 of the SIMA, whether or not it constitutes classified information, is destroyed by the entities referred to in Articles 13 and 20 (1) of the SIMA within 10 days of termination of application of the SIM. Destruction is carried out by a committee of three members in a composition determined by the head of the entity for which a report is drawn up.

Failure to comply with these requirements create conditions and prerequisites for the use of data collected through SIM outside the purpose of preventing, detecting and proving

crimes (Article 32 of SIMA).

In 2022, as a result of the directions given by NSIDCB and action taken by the heads of the authorities under Article 13 of SIMA, the information not used for preparation of ME has been destroyed within the statutory time limit and only in isolated cases delay has been noticed. In the provision of Art. 175 para. 7, s. 2 of the Code of Criminal Procedure does not provide for a time-limit within which the judge who authorised the application of the SIM may order the destruction of the information which did not serve for the preparation of the ME. Notwithstanding that the authority under Article 173(1) of the Code of Criminal Procedure (Article 13 of SIMA) has requested an order for the destruction of the information under Article 25 of SIMA within the ten-day period, judges have ruled outside this period, and in some identified cases, one month after the request under Article 175(7) of the Code of Criminal Procedure was filed with the court.

This problem has been reflected in the reports of the NSIDCB from the previous years, and the main reasons for its occurrence are the various procedures listed in Art. 175, para. 7 of the CPC and Art. 31, para. 3 of SIMA, as well as the fact that there is no deadline for the judge to rule on the request made.

In this regard, and in order to avoid any possible misuse of information obtained from SIM, we have tabled a motion in the 44th and 47th National Assemblies to repeal this provision in the Criminal Procedure Code.

2.2. Within one month of termination of the application of the SIM, the authority which prepared the request is obliged to submit a report to the judge with details of the type, start and end of application of SIM, the ME produced and the destruction of the information collected (Article 29 (7) of SIMA).

During the inspections of SIMA procedures, it was found that judges require applicants to prepare much more detailed reports. In addition to the requirements set out in the law, the reports provide information on whether the result sought was achieved, which of the authorised operational means were applied and other data relevant to the procedures. Separately, it was found that the judges required the applicants to submit with the report copies of the reports that destroyed the information not used to prepare the MEs. Some judges additionally requested that the records which destroyed the information used to prepare the MEs be submitted to them.

The National Bureau accepts these requests from the authorities referred to in Article 15 of SIMA as good practice, and through it the court exercises additional control over SIMA activity, the validity of the request to use SIM to achieve the intended purpose, and the extent to which and which operational means enable the intended results to be achieved.

V. PROTECTION OF CITIZENS' RIGHTS AND FREEDOMS AGAINST THE UNLAWFUL APPLICATION OF SIM.

1. Alerts of unlawful application of SIM.

In 2022, a total of 287 inspections were carried out by decisions of the NSIDCB on the authorities under Article 13, Article 34n, Article 15 and Article 20 of SIMA (this compares to 569 in 2021, 240 in 2020 and 20 in 2019. – 230), of which 232 due diligence checks on SIMA activities, one thematic check and 54 checks on files opened at the NSIDCB, of which 53 on citizens' reports alleging that SIMA had been unlawfully applied to them, and one on the Bureau's own referral pursuant to Article 8(1)(9) (b) of the Rules of Procedure of the NSIDCB and its administration.

All the reports received have been considered at the meetings of the NSIDCB. In 34 cases the investigations were closed. In 7 cases, investigations are continuing in 2023. Thirteen of the alerts received do not comply with the NSIDCB's Internal Rules on alerts of SIM misuse. At NSIDCB meetings held on them, decisions were taken not to carry out inspections, which were communicated to citizens and they were given the opportunity to formalize their alerts in accordance with the Internal Rules. Inspections of 33 files from 2021 were completed in 2022.

The inspections carried out revealed two cases of misuse of SIM:

- SIMs were applied to a citizen for a period of more than 260 days, exceeding the maximum period allowed under SIMA. Two different authorities under Article 13 of SIMA have sought use of SIM against the person for detection of the same criminal activity and the authority under Article 15 of SIMA has granted permission without complying with the provisions of the Act. Pursuant to Article 34e(5) and (6) of SIMA, the National Bureau notified the competent authorities and on the basis of Art. 34g(1) of SIMA notified the citizen that the SRS were unlawfully applied to him;

- in the second case, the NSIDCB found that the request did not contain any facts and circumstances giving reason to believe that the person was involved in the preparation, commission or commission of the serious intentional offence for which the person was sought to be placed under secret control. The application for the use of SIM contains material breaches of the procedure laid down in Article 14(1)(1) of SIMA. On the basis of Article 34f(5) and (6) SIMA, the Bureau notified the competent authorities. The citizen whose rights have been violated is to be notified in accordance with the provisions of Article 34g of SIMA.

2. Proceedings under the APIA and SMLDA brought by citizens on the files of the NSIDCB.

Proceedings under the APIA

The NSIDCB is a public authority and an obliged entity to provide information about its activities as per the provision of Article 1(1) and (3) of APIA. In 2022, 4 applications for access to public information were received – 3 from citizens and 1 from a non-governmental organization. Each application for access to public information was considered by NSIDCB in accordance with the provisions of the APIA and the Internal Rules on the organization of work in NSIDCB on applications for access to public information. NSIDCB has granted access to public information on two of the applications received. The National Bureau has determined that two of the applications do not constitute requests for access to public information within the meaning of the Act, which was communicated to the applicants in a timely manner. There were no refusals to grant access to public information in 2022.

In connection with an appeal of a citizen against a decision of the National Bureau granting partial access to information under the FOIA, an administrative case was initiated in the Administrative Court – Sofia City. № 10696/2021 r.

By a decision dated 04 January 2023, the court found the appeal unfounded and dismissed it. The Court stated in its reasoning that the decision of the National Bureau was adopted in accordance with the substantive law and the rules of administrative procedure. The Administrative Court also referred to the provision of Article 34g,(1) of SIMA. The remedy for the protection of the rights and legitimate interests of citizens should be claimed in person and not through third parties under SIMA in the presence of the statutory limitation under Art. 37 para.

The court's decision entered into force on the day of its pronouncement.

Proceedings under the SMLDA brought by citizens on NSIDCB files

With the entry into force of the amendment and supplement to the SMLDA, published in SG, no. 17 of 06.03.2009, the unlawful use of SIM was included in the scope of the state's strict liability for damages from unlawful acts of law enforcement bodies. The proceedings are carried out under a special procedure. The order of the procedures for the authorisation, application and use of SIM, and the storage and destruction of information obtained through them, established in the SIMA, determines the competence of the State bodies involved in the SIMA procedures. It should be noted that the SCCs has established consistent case law in cases under Article 2(1)(7) of SMLDA. The SCCs perceives the NSIDCB 's deci-

sions finding illegal use of SIM as official certifying documents issued by a competent authority within the scope of its powers, which have material probative value of the facts and circumstances certified therein, but the judgement of illegality contained in the instructions related to improving the mode of use and application of SIM is mandatory only for the bodies providing and applying these means. The SCCs held that such judgment is not binding on a court hearing a claim for damages brought by a citizen notified by the NSIDCB of the wrongful application of the SIM against him. In proceedings for damages, the citizen enjoys the substantive evidentiary value of the act concerning the factual findings, but it is not a matter of legality.

In 2019, there were five civil cases of SIM misapplication concluded. In 2020, a case has completed concerning a claim based on Article 2 (1) (3) and (7) of SMLDA initiated by a citizen for non-pecuniary damage suffered as a result of his being accused of having committed a crime and the unlawful use of SIM. By Judgment No. 1042/13.07.2022 in Civil Case No. 2869/2021 of the Court of Appeals of Sofia, referred to claims based on Art. 1, item 7 of the SMLDA, the Judgment No. 262304/07.04.2023, rendered in civil case no. No. 8701/2019 of the SCC in the part in which DGCOC and SANS were ordered to pay compensation for non-pecuniary damage. The decision is annulled in the part in which PORB is sentenced to pay the plaintiff compensation for non-property damages and the plaintiff's claim is rejected as unfounded and the case is returned to the SGS for consideration of the claims with a legal basis, Art. 2, para. 1, item 7 of SMLDA against the Ministry of Internal Affairs and CCU-AAFC. By order of the SCCs No 625/04.04.2023 no appeal against the decision of the Court of Appeal – Sofia is allowed. The ruling is final.

VI. INTERACTION WITH STATE AUTHORITIES. OPINIONS ON BILLS SUBMITTED TO THE NATIONAL ASSEMBLY.

Workshop with the authorities referred to in Article 15 of SIMA

In October 2022 the National Special Intelligence Devices Control Bureau held the workshop with the authorities under Article 15 of SIMA. The meeting was aimed at addressing the gaps identified by the oversight bodies, seeking solutions to the issues raised and aligning practice in the application of the procedures set out in the CCP and SIMA. Issues were discussed with the representatives of the authorities referred to in Article 15 of SIMA, good practices were discussed and views and new approaches were exchanged to help in-

crease the effectiveness of SIMA enforcement and protect citizens' constitutional rights and freedoms.

As a result of the discussions, we came together around solutions related to judicial review of SIM request, authorization and enforcement:

- ✓ *provide a rationale for the inability to otherwise collect the necessary data or a description of the extreme difficulty involved in collecting it.*
- ✓ *give reasons for the need to apply the operational means.*
- ✓ *give reasons for the length of time required for implementation.*
- ✓ *the authorisation for the use of SIM should not allow a change in the legal qualification of the offence for which the request is made.*
- ✓ *the 48-hour time limit for deciding on requests for the use of the SIM should be respected.*
- ✓ *The offence under Article 321 of the Penal Code is an independent ground for requesting and authorising the use of a SIM. The specific execution of the criminal activity for each of the persons should be specified, as well as the time and place of its execution.*

If there is evidence of secondary criminal activity carried out in conjunction with the formation/leadership/participation in an OCG, the request and authorisation should contain the facts and circumstances of that activity.

✓ *The enforcing entity to make a request to the authority referred to in section 13 of SIMA, with a copy to the authority referred to in section 15 of SIMA, for action to be taken under Article 23 of SIMA or Article 22(2)(2) of SIMA in respect of a communicator that is not being used by the person for whom the SIM authorisation has been granted.*

✓ *There shall be no interruption between the initial request to use the SIM and the request for an extension. In determining the date from which the SIM extension commences, do not exceed the maximum statutory period of 6 months (3 years for national security activities).*

✓ *deduct from the period for the application of the SIM in respect of the designated person the period under the procedure applied under Article 12(1)(4) of SIMA for the period during which the same person has been controlled. The information to be provided by the applicant on request pursuant to Article 12(1)(1) of SIMA.*

✓ *to establish a single information system for judicial decisions on SIM applications.*

Encouraged by the feedback, questions raised and suggestions made, the NSIDCB is also planning to organise a workshop with the authorities under Articles 13, 15 and 20 of SIMA.

Opinions on Bills tabled in Parliament

In exercise of its functions under Article 34f(1) of SIMA, the National Bureau has carried out inspections of the bodies referred to in Articles 13, 34n, 15 and 20 of SIMA, during which it has identified certain difficulties in the implementation of the statutory procedures for the use and application of SIM and for the storage and destruction of information acquired through them.

In order to overcome these, proposals for amendments to the SIMA and the CPC have been submitted to the Commission for Control over Security Services, Application and Use of Special Intelligence Means and Access to Data under the Electronic Communications Act at the 44th and 47th National Assemblies, in consultation with the bodies referred to in Articles 13, 15 and 20 of the SIMA, for amendments and additions to the existing legislation that would improve the procedures set out in the CPC and the SIMA.

In short, the proposals made are expressed in the creation of order and conditions for the destruction of ME, change of the term under Article 31(3) of SIMA for the destruction of the information under Article 24 and Article 25 of SIMA, dropping the mandatory textual reproduction of the content of ME in the protocol for its preparation, dropping the requirement regarding the issuing of an order by the authority under Article 174 of CCP for the destruction of the information collected when using SIM and did not serve for the preparation of ME, creating the possibility that SIM can also be used in relation to activities with the aim of acquiring intelligence information related to the protection of national security - this proposal should be taken into account with the decision of the European Court of Human Rights dated 11.01.2022, issued in the case "Ekimdzhiev and others v. Bulgaria".

Opinion on the draft Law on amendment and supplementation of the Judiciary Act submitted by the Council of Ministers

With reference to a letter received from the Commission for Control over Security Services, Application and Use of Special Intelligence Means and Access to Data under the Electronic Communications Act at the 47th National Assembly requesting an opinion on the draft law submitted by the Council of Ministers amending the JSA and in SIMA on the status

of the European Public Prosecutor and European delegated prosecutors when requesting the use of SIM, the National Bureau submitted its opinion. Representatives from the NSIDCB participated in workshops with the Deputy Minister of Justice and the Legal Affairs Committee of the 47th National Assembly, where they discussed the need for the proposed amendments to SIMA.

Proposals for legislative amendments to the CCP and SIMA

In relation to proposals received to amend the CCP and SIMA, we expressed our views on the increased ability of a large number of applicants to request the use of SIM – investigators, investigating police officers, investigating customs inspectors. The National Bureau has always advocated the principle understanding not to increase the number of applicants under Article 13 of SIMA and Article 173(1) of the Criminal Procedure Code. (1) of the Code of Criminal Procedure, as this would lead to opportunities for abuse of citizens' constitutional rights to privacy, home and correspondence.

The National Bureau has not found any need for change in the procedural laws along the lines indicated by the drafters of the Bill while conducting inspections of the authorities under Article 13 of SIMA and therefore did not support the proposed changes in the CPC and SIMA. The opinion on the submitted draft amendments to the legislation in the parts concerning SIMA procedures has been submitted to the Commission for Control over Security Services, Application and Use of Special Intelligence Means and Access to Data under the Electronic Communications Act, the Committee on Internal Security and Public Order and the Committee on Legal Affairs at the 48th National Assembly.

VII. INTERNATIONAL ACTIVITY.

International exchange of information. Participation in international forums and conferences of supervisory authorities.

In line with the priorities identified for 2022 in the report on the work carried out in 2021, the National Bureau continued to be an active participant and driver in the development of the oversight of these covert means of information gathering at European level during the year under review. Through participation in international initiatives and exchange of information, good cooperation and interaction with similar supervisory authorities from the European Union and international organisations was consolidated.

In 2022 the NSIDCB Chairperson participated in the European Intelligence Oversight Conference held in October in London, United Kingdom UK. The event was hosted and organised by the Investigatory Powers Commissioner's Office (IPCO) Chief Commissioner Sir Brian Leveson and his team.

Topics discussed at the forum included "Collaboration in the Surveillance Community to Build Technological Competence", "Privacy Indicators and the Protection of Citizens' Rights", "The Impact of Financial Parameters in the Application of Surveillance Methods to Critical Infrastructure Units with Concentrations of Persons of Concern", "Developments in European Jurisprudence and the Role of the Council of Europe", International Legal Cooperation and Convention 108+.

NSIDCB representatives participated in the International Conference on Intelligence Oversight in Strasbourg, France. The event was hosted and organised by Prof. Joe Cannataci, who is the head of the International Intelligence Oversight Forum (IIOF).

The conference discussed topics related to:

- ✓ The rule of law and the protection of human rights in the conduct of intelligence activities by security and public order agencies;
- ✓ court jurisdiction and jurisprudence, and balancing human rights and national security;
- ✓ the right to privacy, which is a universal right for every citizen.

The three main components that are of strategic importance, influencing in the protection of the rights and freedoms of citizens:

- ✓ the development of IT technologies;
- ✓ the legal, operational and technological competences of the supervisory authorities;
- ✓ the continuous improvement of supervisory authorities and judicial legislation.

As the competent authority in charge of the monitoring control procedures for the implementation of SIM and the protection of the rights and freedoms of citizens, the NSIDCB gives opinions and recommendations related to surveillance activities.

The National Bureau has actively participated in the European Union Agency for Fundamental Rights (FRA) project "National Intelligence Authorities and Surveillance in the EU". The European body sent a report with information and views on safeguards and means of protection of fundamental rights of EU citizens, which largely reflect the views and official position of the FRA. The document is publicly available for transparency and information purposes only and does not constitute legal advice or a legal framework. The National Office

has drawn up an opinion, with conclusions and recommendations that respond to the questions raised by the European institution.

The National Bureau, as the competent authority, sent an opinion and made proposals related to the development of a legislative framework on the modalities of the use of spyware and the control of the storage and destruction of information acquired through it to the Directorate General Justice and Consumers of the European Commission. The aim is to map the situation in the Member States and to examine the interaction with EU legislation following the scandals that have emerged over the unauthorised use of Pegasus software.

VIII. ORGANISATION OF ADMINISTRATIVE WORK.

1. Structure of the administration.

The total number of staff is 21 full-time employees, of which 17 employees are actually employed by the end of 2022.

General administration

The general administration supports the performance of the NSIDCB's powers, enables the activities of the specialised administration to be carried out and carries out the technical activities related to the administrative services. The General Administration has set up the Finance and Accounting Sector, which carries out the planning, management and control of financial resources, the financial provision of the activities of NSIDCB and its administration.

Specialised administration

The specialised administration assists in the performance of the NSIDCB's powers by taking part in audits carried out by the authorities referred to in Articles 13, 15 and 20 of the SIMA regarding compliance with the law with regard to activities relating to the authorisation, use and enforcement of the SIM or the storage or destruction of the information acquired through them, by analysing, systematizing and summarising information and drawing up expert opinions and proposals.

2. Financial and economic activities. Budget and financial control.

The National Bureau applies a programme budget format implementing a budget programme 'Control of Special Intelligence Means' in the functional area 'Monitoring of authorisation, application and use of special intelligence means'.

With Art. 47, para. 1 of the State Budget Act of the Republic of Bulgaria for 2022, a budget of the National Bureau in the amount of BGN 1,791,300 was adopted.

In 2022, a financial audit was carried out by the Court of Auditors of the RB on the 2021 annual financial statements of NSIDCB. The final audit report issued is of the opinion that the financial statements of the National Bureau give a true and fair view of its financial position, its results and its cash flows as at 31.12.2019.

Financial management and control at NSIDCB is implemented through the financial management and control system comprising policies, procedures and activities designed to provide reasonable assurance that the objectives of the organisation are achieved through compliance with legislation, internal acts and contracts; reliability and comprehensiveness of financial and operational information; effectiveness, efficiency and economy of operations; safeguarding of assets and information; and prevention and detection of fraud and irregularities. Procedures are in place for the ongoing monitoring of the implementation of financial commitments and contracts and for the ex-post evaluation of performance.

IX. CONCLUSION.

The use of SIM for the purpose of detecting and proving criminal offences is a particular *modus operandi* of law enforcement and law enforcement authorities which, in any legal system, is subject to strict conditions and a detailed order of application. The use of SIM is justified in a limited range of cases, in the investigation of serious intentional crimes with a high degree of public danger or threat to national security. In a system of democratic criminal justice, the use of SIM is admissible as a last resort to gather evidence when the objectives of proof cannot be achieved by other means.

The use of SIM entails an infringement of one of the fundamental human rights, a right of utmost importance for the existence of a democratic state and the rule of law – the inviolability of the person and the sphere of personal relations of citizens. Because of the specific relationship between the application of SIM and the freedom of the individual and society, the question of the modalities of the application of SIM is of particular sensitivity in any democratic state. In this respect, any unlawful use of SIMs or any breach in the storage and use of information collected through SIMs poses a serious threat to the normal functioning of society.

In 2022, NSIDCB continued to exercise objective and independent supervision, creating an environment for enhancing trust in security services, law enforcement and judiciary bodies.

The main objectives of NSIDCB reflect the mission of the institution and its will to improve the procedures for requesting, authorizing and applying SIMs, storing and destroying the information acquired through them.

In the period of its creation, the NSIDCB has repeatedly indicated in its reports to the National Assembly that it is necessary to introduce a unified information system for the persons against whom SIMs have been used, which would provide information to the judges when ruling on requests for the use of SIMs.

The NSIDCB's main strategic objectives and priorities are to improve SIMA procedures:

- ✓ by participating in workshops and organising training for Article 13 SIMA bodies;
- ✓ drawing up and storing ME and further developing the legal framework by establishing a procedure for the destruction of ME;
- ✓ establishment of an electronic register with the authorities referred to in Article 15 of SIMA.

In 2023, NSIDCB planned to hold working meetings with the authorities referred to in Articles 13, 15 and 20 of the SIMA with a view to establishing a uniform practice of using and applying SIM, as well as storing and destroying the information acquired through them.

The NSIDCB's Rules of Procedure and Administration are to be updated. Amendment and supplementation of the 'Methodology for monitoring and control of the procedures for the authorisation, application and use of special intelligence means, storage and destruction of information acquired through them and for the protection of citizens' rights and freedoms against their unlawful use' and development of new templates for the registers of the bodies and structures referred to in Articles 13, 15 and 20 of SIMA for their activities under the law, as well as rules for their maintenance.

The National Bureau confirms the position expressed in the previous report on the need to adopt amendments to SIMA and the CCP and to align them on the procedures for re-

questing, authorising and applying SIM. In the period from the enactment of the SIMA to date, considerable practice has been developed in its application, from which many conclusions can be drawn about the most pressing changes. The National Bureau is ready with expert proposals.

In conclusion, it should be noted that in order to be effective and useful, the activities of the supervisory authority need to ask questions and define risks. The supervisor needs to be decisive in making criticisms and recommendations so that mistakes are corrected and the application of special intelligence is always carried out within the legal limits.

The security and public order services and law enforcement agencies are under our supervision. They work in the service of the security of the country and of Bulgarian citizens, in situations that are not indisputably clear and where there is a possibility that mistakes could be made. That is why commitment and professionalism are needed, and it is necessary to increase our knowledge and skills in order to carry out our work competently and correctly, to ensure that the constitutional rights and freedoms of citizens are protected to the maximum extent.