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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**LAW \***  
**No.753-XIV of 23.12.99**

**ON THE INTELLIGENCE AND SECURITY SERVICE**

**AND**

**LAW \***  
**No. 59 of 29.03.2012**

**ON SPECIAL INVESTIGATIVE ACTIVITY**

**OF THE REPUBLIC OF MOLDOVA**

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\* *Non-official translation*

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**ON THE INTELLIGENCE AND SECURITY SERVICE**  
**OF THE REPUBLIC OF MOLDOVA**

**No.753-XIV of 23.12.99**

*Official Gazette of Republic of Moldova no.156/764 of 31.12.1999*

*Amended by the laws:*

*LP85 of 19.04.13, MO104-108/10.05.13 art.327*  
*LP304 of 26.12.12, MO48/05.03.13 art.150; in force as of 05.03.13*  
*LP181 of 19.12.11, MO1-6/06.01.12 art.4; in force as of 01.03.12*  
*LP151 of 15.07.11, MO131-133/12.08.11 art.403*  
*LP66 of 07.04.11, MO110-112/08.07.11 art.299*  
*LP65 of 07.04.11, MO110-112/08.07.11 art.297*  
*LP12 of 11.02.11, MO34-36/04.03.11 art.58*  
*LP63 of 23.04.10, MO75-77/18.05.10 art.213*  
*LP127-XVIII of 23.12.09, MO197-200/31.12.09 art.664*  
*LP108-XVIII of 17.12.09, MO193-196/29.12.09 art.609; in force as of 01.01.10*  
*LP273-XVI of 07.12.07, MO84-85/13.05.08 art.288*  
*LP154-XVI of 21.07.05, MO126-128/23.09.05 art.611*  
*LP177-XVI of 22.07.05, MO107-109/12.08.05 art.537*  
*L262-XV of 15.07.04, MO132-137/06.08.04 art.708*  
*L136-XV of 06.05.04, MO91-95/11.06.04 art.482*  
*L12-XV of 06.02.04, MO35-38/27.02.04 art.190*  
*LP438 of 06.11.03, MO239-242/05.12.03 art.960*  
*LP206-XV of 29.05.03, MO149/18.07.03 art.598*  
*LP13-XV of 06.02.03, MO35-37/07.03.03 art.143*  
*LP333-XV of 05.07.01, MO89/31.07.01*  
*LP1276 of 06.10.00, MO144/16.11.00*

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The Parliament adopts the present organic law.

The present law shall establish the purpose, legal framework, principles, areas of activity, authorizations, forces and means of the Intelligence and Security Service of the Republic of Moldova, and the ways of exercising the control and supervision of the activity thereof.

**Chapter I  
GENERAL PROVISIONS**

**Article 1.** Intelligence and Security Service of Republic of Moldova

(1) The Intelligence and Security Service of the Republic of Moldova (hereinafter referred to as Service) shall be a state body specialized in the field of state security.

(2) The activity of Service shall be coordinated by the President of the Republic of Moldova, within the competence thereof, and shall be subject to the Parliament control.

(3) The Service shall be a centralized unitary body consisting of the subunits of central apparatus of Service and the territorial bodies thereof.

(4) The staff of Service shall be established and approved by the Parliament at the proposal of director of Service.

(5) The territorial bodies shall be directly subordinated to the head of Service. The location thereof may not correspond to the administrative-territorial division of the Republic of Moldova.

(6) The Service shall be a legal entity, have official and conventional name, other necessary attributes, bank accounts, including foreign currency bank accounts.

## **Article 2.** Legal framework of Service activity

(1) The legal framework of Service activity shall be the Constitution of the Republic of Moldova, this law, other legislative acts, decrees of President of the Republic of Moldova and Government decisions.

(2) The activity of Service shall be also carried out in accordance with the international agreements that the Republic of Moldova is a part of.

## **Article 3.** Principles of Service activity

The Service shall carry out its activity according to the principles of:

- legitimacy (lawfulness);
- observance of human rights and freedoms;
- humanism;
- non-membership to a party;
- opportunity (timeliness);
- conspiracy, combination of methods and ways of open and covered activity;
- centralization of Service administration (leadership), combination of unipersonal and collegial administration (leadership).

## **Article 4.** Observance of human rights and freedoms in the activity of Service

(1) Within its activity, the Service shall ensure the observance and compliance with the human rights and freedoms. There shall not be admitted the limitation of human rights and freedoms, unless otherwise provided by the Constitution and other legislative acts.

(2) The citizens whose rights and freedoms have been violated by persons with leading positions of Service shall have the right to claim the acts of such persons with the hierarchically superior body of Service, with the prosecutor's office or court. The head of such body of Service, the prosecutor or judge shall be obliged to undertake measures for reinstating or restoring into such rights and freedoms, repairing and fixing the damage caused and holding liable the guilty persons in accordance with the legislation.

(3) The public administration authorities, as well as the enterprises, institutions and organizations, regardless of type of property, the political and public formations and citizens shall have the right, in accordance with the legislation, to receive explanations and information from Service in case of infringement of rights and freedoms thereof, and to request from Service to repair the damage caused by the illegal acts of persons with leading positions of Service while holding the position or on duty.

(4) The data on private and personal life which affect the honor and dignity of citizen or likely to harm the lawful interests thereof, obtained during the Service activity, may not be made public unless with the consent of such citizen, except of cases provided by legislation.

(5) The persons with leading positions of Service, guilty of abuse (misuse) of authority or misuse of office, either by abuse of power or excess of office assignments, shall be liable as provided by law.

**Article 5.** Right of citizens to the information on Service activity

(1) The citizens shall be informed about the activity of Service by means of mass-media and other ways, as established by law.

(2) The information on rights and obligations, main areas of activity of Service shall be integrally and fully presented.

(3) There shall be prohibited to make public the information which is a state secret, trade secret, as well as other official information with limited accessibility, the disclosure of which could bring prejudice to the state security, honour and dignity of a person or could harm the rights and freedoms thereof, except the cases stipulated by law in the interest of justice.

*[Art.5 amended by Law no.66 of 07.04.2011, in force on 08.07.2011]*

**Article 6.** Defence of information on Service activity

(1) The citizens employed by Service, as well as those allowed and admitted to the information regarding the activity of Service, shall be subjected to the procedure of access to the information which is a state secret, unless other way is provided by law.

(2) The citizens allowed and admitted, under conditions of law, to the information regarding the activity of Service which is a state secret shall be liable for disclosing thereof in accordance with the legislation in force.

(3) The documents and materials containing information on Service staff, the persons who provide or have provided support in secret, as well as information about the organization, tactics, methods and means of carrying out the operative investigation activity by Service, shall be a state secret and shall be kept in the Archives of the Service. The materials from Service Archives (Record) which have a historic and scientific value shall be cleared from secret and shall be remitted for being kept with the National Archives of the Republic of Moldova as established by law.

*[Art.6 amended by Law no.65 of 07.04.2011, in force on 08.07.2011]*

**Article 7.** Assignments of the Service

The Service is attributed with the following duties:

a) development and realisation, within the limits of its competence, of a system of measures directed at discovering, preventing and counteracting the following actions, which, according to the legislation, endanger the state, public and individual security:

- actions directed at changing, through violence, the constitutional order, undermining or liquidating the sovereignty, independence and territorial integrity of the country. (These actions cannot be interpreted to the detriment of political pluralism, respect for constitutional rights and freedoms of persons);
- activities which contribute, directly or indirectly, to the deployment of military actions against the country or to the unleashing of a civil war;
- military actions or other violent actions which undermine the foundations of the state;
- actions aimed at overthrowing through violence the legally elected public authorities;
- actions that favour the emergence of exceptional situations in the transportation system, telecommunications, at economic entities or entities of vital importance;

- espionage, namely the transfer of information which constitutes state secret to other states, as well as the illegal acquirement or possession of information which constitutes state secret with for the purpose of transmitting it to foreign states or anti-constitutional structures;
- treason manifested through rendering of assistance to a foreign state in the deployment of hostile activities against the Republic of Moldova;
- actions which infringe upon the constitutional rights and freedoms of citizens and endanger the security of the state;
- preparation and commission of assaults on the life, health and inviolability of high ranking official persons of the country, state dignitaries and public life figures from other states present in the Republic of Moldova;
- misappropriation of armaments, ammunition, combat equipment, explosives, radioactive, poisonous, narcotic, toxic and other substances, smuggling of such substances, their illegal production, use, transportation and storing, if such actions endanger the interests of ensuring state security;
- setting up illegal organizations or groups that endanger the security of the state or participation in the activities thereof;

b) protection of the state secret, exercise of control over the protection and prevention of leakage of information which constitutes state secret and other information of importance for the state;

c) establishment, ensuring the functioning and security of governmental telecommunications systems, development of strategies and realization of national policy in the field of development, management and ensuring the functioning and security of special telecommunications systems;

d) undertaking activities aimed at combating terrorism and the financing and material assistance of terrorist acts;

e) ensuring technical interception of communications made through electronic communications networks with the use of special technical means, connected, if necessary, to the network equipment of providers and / or electronic communications services.

*[let. e) of Art.7 introduced by the Law LP85 of 19.04.13, MO104-108/10.05.13 art.327]*

## **Chapter II**

### **ASSIGNMENTS AND AREAS OF ACTIVITY OF SERVICE**

#### **Article 8.** Areas of activity of Service

(1) To fulfil the assignments related to the state security, the Service shall carry out:

- a) intelligence activities;
- b) counterintelligence activities;
- c) combating the offences the investigation of which is attributed, according to legislation, to the Service. Other assignments in the field of combating and fighting against criminality (delinquency) may be assigned to Service by laws and other normative acts.

(2) The way of conducting the intelligence and counterintelligence measures, as well as the conditions of use of secret methods and means in carrying out the intelligence and counterintelligence activity shall be established by legislation.

*[Art.8 amended by Law no.206-XV of 29.05.03, in force on 18.07.03]*

### Chapter III

## OBLIGATIONS AND RIGHTS OF SERVICE AND EMPLOYEES THEREOF

### Article 9. Obligations of Service

The Service shall be obliged:

- a) to inform the Parliament, President of the Republic of Moldova, Government and other public authorities about the issues and matters related to the interests of state security;
- b) to obtain and to receive intelligence data in the interest of ensuring the security of the Republic of Moldova, increasing its economic, technical, scientific and defensive potential, creating conditions to promote its foreign and domestic politics;
- c) to discover, to prevent and to counteract the intelligence and subversive activity of foreign special services and organizations, and other separate persons, directed and aimed at causing prejudice to the security of the Republic of Moldova;
- d) to discover, to prevent and to counteract the offences which criminal prosecution is related, according to legislation, to the competence of Service, to find out persons who have committed or are suspected in committing such offences;
- e) to ensure provision of counterintelligence measures to the Ministry of Defense, Ministry of Interiors, other military formations, created in the conditions of the law, and of control and customs bodies;
- f) to provide the head of state, ministries, departments and other public authorities, including from abroad, according to the Nomenclature prepared by Government, with governmental, ciphered, secret connection and with other types of telecommunications; to organize and to ensure the safety of their operation;
- g) to ensure, within its competence, the safety of objectives of defensive complex, financial and banking, energetic, transport and telecommunications system, and the safety of life important objectives, informational and telecommunications systems, scientific researches;
- h) to exercise control in order to ensure the keeping of information which is a state secret; to take part in developing and conducting measures of protection of information which is a state secret within public authorities, military formations, enterprises, institutions and organizations, regardless of property type; to undertake, as established, measures related to the access of citizens to the information which is a state secret;
- i) at the request of heads of public authorities, under conditions of law, to check and to provide data on persons who are to be employed at public authorities;
- j) to undertake, jointly with other public authorities, measures of ensuring the security of institutions of the Republic of Moldova situated on the territory of other states and its citizens from abroad;
- k) to take part, within the limits of its competence and in cooperation with the Border Police under the Ministry of Interiors, in ensuring the control of state border of the Republic of Moldova;
- l) to provide, by available forces and means, including technical ones, support to the bodies of interiors and other law enforcement bodies in fighting against criminality (delinquency);
- m) to discover radio emissions of radio-electronic means which activity jeopardize the state security;
- n) to participate, according to the legislation, in solving problems related to the granting and withdrawal of citizenship of the Republic of Moldova, entrance/leaving in/from country of citizens of the republic and foreigners, as well as observance and compliance with the residence permit of foreigners in the country;
- o) to maintain in good condition the mobilization training of Service, to form the necessities and to keep records of staff reserves;
- p) within the limit of its competences, to plan, to carry out activities and to submit to the competent bodies the information necessary to ensure the state military security;
- q) when declaring a state of siege or war, within its competence, to coordinate with the General Staff of Armed Forces the measures of keeping the regime of siege or war state and to participate in ensuring the defensive operations of country.

*[Art.9 as last amended by Law no.304 of 26.12.2012, in force on 05.03.2013]*

**Article 10. Rights of Service**

(1) The Service shall have the right:

- a) to carry out, in accordance with the law, operative investigation measures;
- b) to undertake measures of prophylaxis of offences which, according to the legislation, are related to the competence of Service;
- c) to engage, under the conditions provided by law, in open or secret way (including as non-assigned employees), persons, with the consent thereof, in order to contribute in fulfilling the assignments of Service. The powers of non-assigned employees shall be established and determined by the departmental acts of the Service;
- d) to use, under contract or verbal agreement, within the limits necessary to conduct the operative investigation measures, the rooms of Service, other properties of enterprises, institutions, state organizations, military formations, as well as rooms and other properties of citizens;
- e) to use, in case of extreme emergency and necessity, in the interest of service, the telecommunication means of enterprises, institutions and organizations, regardless of type of property, as well as public associations and citizens, with the consent thereof;
- f) to use, in cases which must not be postponed, transport means of enterprises, institutions and organizations, regardless of type of property, as well as transport means of public associations, citizens, except of those belonging to foreign institutions and persons with diplomatic immunity. At the request of owners of transport means, the Service shall repay, under the provision of law, the costs or prejudices caused;
- g) to carry out the administrative detention of persons who have committed offences related to the attempt of entering the territory put under the special supervision of objectives with special regime and other secured objectives, as well as to control the identity acts of such persons, to ask for explanations, to carry out their body search, control and to take objects and acts belonging to such persons; to make reports regarding the administrative contravention;
- h) to forward to public authorities, administration of enterprises, institutions and organizations, regardless of type of property, as well as public associations, enforceable indications concerning the eliminations of causes and conditions contributing to realisation of threats to state security;
- i) to obtain and to receive, free of charge, from public authorities, enterprises, institutions and organizations, regardless of type of property, information necessary to execute the assignments of Service;
- j) to develop state codes and ciphering technical means, to execute cipher works within Service, as well as to perform control upon the observance or compliance with the secretization regime (classification scheme) when handling the ciphered information within the cipher subdivisions of public authorities, enterprises, institutions and organizations, regardless of type of property;
- k) to create, as provided by law, enterprises, institutions, organizations and subdivisions necessary to fulfill the assignments of Service and to ensure the activity thereof;
- l) to engage, jointly with the Ministry of Interiors, the forces and means thereof into actions of state security;
- m) to create or to establish public and covered subdivisions with special destination for the purpose of executing and performing the assignments of Service;
- n) to conduct forensic expertise and of whatever nature, as well as researches related to the competence of Service;
- o) to detach to public authorities, enterprises, institutions and state organizations, as provided and stipulated by Government, and to private institutions, with the consent of heads thereof, intelligence and security officers in order to hold positions therein, at the same time continuing to perform the special service;
- p) to establish relations with foreign special services and law enforcement bodies; to enter, as established and within its competence, into international agreements;



- q) to dispose of official representatives of Service in foreign countries, under mutual agreement with special services and law enforcement bodies thereof, aiming at fighting more efficiently against the international offences;
- r) to undertake measures in order to ensure the proper and adequate security;
- s) to use, for conspiratorial purpose, acts codifying the identity of persons with leading positions, the department pertaining of subdivisions, organizations, rooms and transport means of bodies exercising operative investigation activity, as well as the identity of persons who cooperate with such bodies in a confidential manner;
- t) to conduct scientific researches on matters related to the state security;
- u) to create work groups consisting of intelligence and security officers and specialists invited from other public authorities for conducting the researches on important matters related to the state security;
- v) to carry out the training and retraining of Service staff, including abroad, to prepare, on a compensation basis or free of charge, staff for foreign special services.

(2) It shall not be allowed to use the rights granted to the Service for fulfilling certain obligations which are not provided by the legislation.

*[Art. 10 as last amended by Law no.65 of 07.04.2011, in force on 08.07.2011]*

#### **Article 11.** Right of application of physical force, firearm, munitions and special means

The intelligence and security officer shall have the right to apply the physical force, firearm, munitions and special means under the conditions and provisions of Law no.170-XVI dated 19 July 2007, on the status of intelligence and security officer.

*[Art. 11 in the edition of Law no.65 of 07.04.2011, in force on 08.07.2011]*

#### **Article 12.** Cooperation of Service with domestic and foreign institutions

(1) The Service shall carry out the activity in cooperation with public authorities of the Republic of Moldova, with enterprises, institutions and organizations, regardless of type of property.

(2) The way and conditions of cooperation of Service with other public administration authorities shall be established by agreements between them or by some mutual normative acts.

(3) The Service may use the availabilities of other bodies from the system of security bodies of the Republic of Moldova in the conditions provided by law.

(4) The public authorities, as well as enterprises, institutions and organizations, regardless of type of property, shall be committed to provide support to the Service in the view of fulfilling the assignments thereof, including providing, according to the list approved by Government, positions for the employment of intelligence and security officers engaged in solving the tasks of ensuring state security.

(5) The law enforcement and criminal prosecution bodies shall inform the Service about any data and information arising from their service activity and related to the state security.

(6) The citizens, enterprises, institutions and organizations, regardless of type of property, providing mail, telecommunication services of any type, including services in the system of ciphered, confidential connection, by satellite, global, regional and department informational networks, shall be obliged, according to the legislation in force, to create conditions necessary for the Service to conduct the operative investigation measures.

(7) The cooperation of Service with foreign special services and organizations, with law enforcement bodies and other foreign organizations, shall take place on the basis of international agreements.

*[Art. 12 amended by Law no.65 of 07.04.2011, in force on 08.07.2011]*

## **Chapter IV HEAD (LEADERSHIP) AND STAFF OF SERVICE**

### **Article 13.** Head (Leadership) of Service

(1) The Service shall be ruled by a director, appointed to the position by the Parliament, at the proposal of President of the Republic of Moldova, for a term of 5 years. The dismissal of director shall be made by the Parliament at the proposal of President of the Republic of Moldova or deputies in Parliament, especially in case of issuance/adoption thereby of an administrative act or conclusion of a legal act by infringing the lawful provisions concerning the conflict of interests or in case of incompatibility, a fact established by the clearance form remained final.

(2) On the day of appointment to position, the director of Service shall swear before the Parliament, in the presence of the President of the Republic of Moldova, the following oath: "I do solemnly swear to devote all my personal strength and abilities to the advancement and prosperity of the Republic of Moldova, to always abide by the Constitution and the laws of the country, to defend the democracy, the fundamental rights and freedoms of man, and the sovereignty, independence, unity and territorial integrity of the Republic of Moldova."

(3) The Director of Service shall have the right to take part at the Government meetings.

(4) The Director of Service shall have deputy directors who shall be appointed to the position by the President of the Republic of Moldova, at the proposal of the director of Service.

(5) For fulfilling the assignments of the Service, there shall be established a college which composition shall consist of: director (chairman), deputy directors, and other persons with leading positions in the Service.

(6) The members of Service College shall be confirmed by the President of the Republic of Moldova, at the proposal of the director of Service.

*[Art.13 added by Law no.181 of 19.12.2011, in force on 01.03.2012]*

### **Article 14.** Staff of Service

(1) The staff of Service shall consist of intelligence and security officers and civil servants (hereinafter referred to as *employees*), employed on a contract basis. Depending on the assignments thereof, the intelligence and security officers shall make part of personnel on the staff or cryptic staff.

(2) The legal status, way of fulfilling the special service by contract, disciplinary regime, interdictions and liability of intelligence and security officer shall be regulated by Law no.170-XVI of July 19, 2007, on status of intelligence and security officer.

(3) The work activity, work conditions, remuneration and norming (workloads) of work of civil servants shall be regulated by labor legislation, law on status of public servant and other normative acts, taking into consideration the peculiarities stipulated by this law.

(4) As civil servant there may be employed any person meeting the general conditions of employment, has professional training, qualification and health condition necessary to hold the position and correspond to the security criteria.

(5) During the period of activity with Service, the employees may not hold the citizenship of other states.

(6) The Service employees may not pertain to parties or any other socio-political organizations. The civil servants may establish and join trade unions.

(7) The Service employees may not carry out or be involved in any way in entrepreneurial activity, to assist other persons in such activities, to establish companies, cooperatives and non-profit organizations and to participate in the administration thereof, except as provided by law.

(8) When being employed by Service and subsequently every year, the intelligence and security officers and civil servants of Service shall be committed to submit a statement on income and property under the conditions provided by law.

(9) The Service employees shall be subject to the compulsory state finger-print registration in accordance with the law.

(10) The Service employees shall be committed and required to strictly keep the state secret, other official information with limited accessibility, including after leaving, for whatever reason, the Service. The disclosure of data and information which have become known thereto over the course of the activity in the Service, except in cases provided for by law, shall be prohibited and shall be punished according to the law.

*[Art. 14 in the reading of Law no.65 of 07.04.2011, in force on 08.07.2011]*

## **Chapter V PERSONS PROVIDING SUPPORT TO SERVICE**

**Article 15.** Persons providing support to Service

(1) Persons who provide support to Service shall be entitled:

- a) to enter with Service, in cases provided by departmental acts of Service, into secret cooperation agreements;
- b) to receive explanations from Service staff related to their assignments, rights and obligations;
- c) to use, for conspiracy purposes, ciphered identity acts;
- d) to receive compensation;
- e) to be compensated for damage caused to their health or property in cooperation process with Service.

(2) The persons who provide support to Service shall be required:

- a) to comply with the terms of the cooperation contract or agreement with Service;
- b) to fulfill the missions given by Service directed towards the fulfillment of their obligations;
- c) not to allow the deliberate presentation of incomplete, biased, false or defamatory information;
- d) not to disclose data or information which constitutes a state secret, and other data that they acquired during the collaboration with Service.

(3) The information concerning the persons who have confidentially provided or provide support to the Service shall be a state secret and can be disclosed only with the written consent of such persons and only in the cases provided by law.

## **Chapter VI SOCIAL AND LEGAL PROTECTION OF SERVICE EMPLOYEES**

**Article 16.** Social and legal protection of Service employees

(1) The social and legal protection of Service employees and their families shall be provided by the state.

(2) The social and legal protection of the security and intelligence officer shall be regulated by Law no.170-XVI of July 19, 2007, on the status of security and intelligence officer.

(3) The social and legal protection of civil servants shall be regulated by the Labor Code and other legal acts containing norms of labor law.

(4) The information on Service employees who fulfill or have fulfilled special missions concerning state security shall be a state secret and can be disclosed only in cases provided by law.

(5) The period of performance by Service employees of special missions related to state security, as well as to the fulfillment of service obligations in other conditions that endanger their lives and health, shall be included in the general seniority (accumulated service), in the special seniority (accumulated service) in public service, in the contribution period and in the period entitling to increase the seniority (accumulated service) in accordance with the law.

*[Art. 16 amended by Law no.65 of 07.04.2011, in force on 08.07.2011]*

## **Chapter VII**

### **INFORMATION, FINANCIAL, TECHNICAL AND MATERIAL PROVISION OF SERVICE**

#### **Article 17.** Information provision of Service

(1) To carry out its activity, the Service shall be entitled to develop, create and operate, in accordance with the law, information, communications and data transmission systems, as well as means of information defense, including means of cryptographic protection.

(2) In the interests of state security, the Service, in the manner established by law, shall have the right of access, free of charge, to informational systems of enterprises, institutions and organizations, regardless of type of property.

#### **Article 18.** Weapons and equipment means of the Service

(1) The Service shall develop, create, acquire and use weapons and equipment means, including special technical means and of other nature, procure and use battle (combat) arms in the possession of Service under a Government decision, and other arms and munitions for it.

(2) The sale, transmission, removal from the territory of the Republic of Moldova and introduction on its territory of weapons and equipment means, including special technical and other means, firearms and munitions for them, to use in the Service activity, shall be made as provided by Government.

#### **Article 19.** Financial and technical-material provision of Service

(1) The financing and material and technical provision of Service shall be made from the state budget.

(2) The properties of Service, including buildings, constructions, equipment, created or to be created, purchased or to be purchased from state budget funds and other means, shall be public property.

(3) The financing of Service may be also carried out from special funds, under the conditions provided by law.

(4) The Service may hold a service estate fund made under the terms of legislation.

*[Art. 19 amended by Law no.154-XVI of 21.07.05, in force on 23.09.05]*

## Chapter VIII CONTROL AND SUPERVISION OF SERVICE ACTIVITY

### Article 20. Control over Service activity

(1) The control over the Service activity shall be exercised by Parliament, Prosecutor's Office and courts, within their competence.

(2) The Service shall present, as established, annually and if necessary upon request, reports on its activity to the Parliament, in plenary session, to the President of Republic of Moldova and the Government.

(3) The external parliamentary public audit over the activity of Service shall be carried out by the Commission on National Security, according to the rules thereof.

(4) The audit of financial activity of Service shall be exercised by the Court of Auditors (Accounts).

*[Art.20 added by law no.12 of 11.02.2011, in force on 04.03.2011]*

*[Art.20 amended by Law no.63 of 23.04.2010, in force on 18.05.2010]*

*[Art.20 amended by Law no.333-XV of 05.07.2001]*

### Article 21. Supervision exercised by prosecutor

(1) The supervision of compliance by Service with the legislation of the Republic of Moldova shall be exercised by the General Prosecutors' Office.

(2) The activity of persons who have provided or provide, as required, support to the Service shall be under the supervision of Prosecutor General or a prosecutor duly authorized by the order of the Prosecutor General.

(3) The information on the organization, tactics, methods and means of activity of the Service shall not be subject to the supervision by the prosecutor.

## Chapter IX FINAL AND TRANSITIONAL PROVISIONS

### Article 22

(1) The Service is created by the reorganization of the National Security Ministry, being the entitled successor thereof.

(2) The employees of the Ministry of National Security shall be deemed to perform and fulfill the special service (work) in Service in the positions they hold, without recertification.

*[Art.22 amended by Law no.65 of 07.04.2011, in force on 08.07.2011]*

*[Art.22 amended by Law no.262-XV of 15.07.04, in force on 06.08.04]*

### Article 23

Until the legislation comes into force in accordance with this law, the legislative acts regulating and governing the Service activity shall apply to the extent they do not contravene this law.

*[Art.24 excluded by Law no.333-XV of 05.07.2001, the other ones numbered]*

**Article 24**

The Director of Service, within 2 months after appointment, shall submit to the Parliament for approval the composition of staff of the Service.

**Article 25**

The Government:

- will ensure, in accordance with the law, the employment of dismissed officials in connection with the reorganization of the National Security Ministry;
- will bring, within 2 months, the normative acts in accordance with this law;
- will adopt the normative acts necessary to implement the provisions of this law;
- will submit to Parliament, within three months, proposals on amendment and addition of legislation in force;
- will ensure the review and revocation by ministries and departments of their normative acts which contravene this law.

*PRESIDENT (SPEAKER) OF PARLIAMENT*

*Dumitru DIACOV*

*Chisinau, December 23, 1999.*

*No. 753-XIV.*

*[Appendix excluded by law no.333-XV of 05.07.2001]*

**LAW**  
**On special investigative activity**

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## **Chapter I**

### **GENERAL PROVISIONS**

**Article 1.** Notion and area of regulation of the special investigative activity

(1) The special investigative activity represents a procedure of a secret and/or public nature, undertaken by the competent authorities, with or without the use of special technical means, with the purpose to collect necessary information for the prevention and fight against crime, ensuring the security of the state, public order, protection of rights and legitimate interest of persons, discovery and investigation of crimes.

(2) The present law regulates the special investigative measures, their method of ordering and enforcement, as well as control over their legality.

**Article 2.** The tasks of the special investigative activity

The tasks of the special investigative activity are:

- a) disclosure of criminal attempts, prevention, termination of crimes and identification of persons who organise and/or commit them;
- b) discovery and investigation of crimes;



- c) search for missing persons or of those persons who hide from criminal prosecution bodies or from the court of law, or who avoid the enforcement of the sentence;
- d) collection of data about possible events and/or actions which could endanger the state security.

**Article 3.** The principles of the special investigative activity

The special investigative activity is based on the following principles:

- a) legality;
- b) observance of person's rights and freedoms;
- c) opportunity and inoffensiveness;
- d) combination of public and secret methods;
- e) cooperation with other state authorities;
- f) exclusion of ideologies and observance of impartiality.

**Article 4.** The special investigative activity and human rights

(1) Any person exposed to special investigative measures has the right to be informed, after its termination, by the prosecutor or by the investigative judge who authorised the measure if it has not resulted in the use of another special investigative measure.

(2) Any person exposed to a special investigative measure has the right to compensation resulting from physical and moral damages caused by means of breaching the present law.

(3) Using the special investigative measures to attain other aims and tasks than the ones provided for in the present law is prohibited.

(4) Special investigative activity undertaken with the breach of the present law implies liability provided for by law.

(5) Any piece of information, any piece of proof that was gathered with the breach of human rights and freedoms are null and considered nonexistent.

**Article 5.** Personal data protection in the process of application of special investigative activity

(1) The persons who have access to personal data of the person exposed to a special investigative measure are obliged to keep confidential the respective data.

(2) The access to the special file or to the materials from the file to other persons than the ones who investigate the special file is prohibited, with the exception of the chief of the specialised subunit within the respective body, limited to the competences, and of the prosecutor who authorised the respective investigative measure or requested it from the investigative judge, as well as with the exception of the investigative judge who authorised the special investigative measure.

## **Chapter II**

### **SUBJECTS EMPOWERED TO CONDUCT SPECIAL INVESTIGATIVE ACTIVITY**

**Article 6.** The subjects which conduct the special investigative activity

(1) The special investigative activity is undertaken by the investigation officers of the specialised subunits inside or subordinated to the Ministry of Interior, Ministry of Defence, National Anticorruption Centre, Intelligence Service, State Protection and Guard Service, Customs Service and the Department of Penitentiary Institutions of the Ministry of Justice.

(2) It is prohibited for other institutions than the ones specified in paragraph 1 to undertake special investigative measures.

(3) The investigation officer who conducts the special investigative activity fulfils his/her tasks independently, with the exception of the case when the special investigative activity was ordered and coordinated or is led within a criminal procedure by the prosecutor or by the criminal investigation officer, in interaction or in cooperation with the confidential collaborators.

**Article 7.** The competence of the authorities whose specialised subunits undertake special investigative activity

(1) With the purpose to organise and fulfil the special investigative activity, the authorities whose specialised units conduct special investigative activity hold the competence to:

- a) create informational systems to ensure the attainment of the tasks of the special investigative activity;
- b) conclude agreements on the use of offices, homes, transport means, goods of enterprises, institutions, organisations, military units, as well as other goods of legal and physical persons;
- c) manufacture and use, in the course of the special investigative measures, documents which codify the identity of the persons with decision making powers, subunits, organisations, premises and transport means, as well as the identity of the confidential collaborators;
- d) purchase special technical means, such as: audio and video recording equipment, photo equipment, other modern technical means to secretly obtain information;
- e) create, as provided by law, enterprises, organisations and subunits to attain the tasks provided for by the present law.

(2) The competences specified at paragraph 1 letters c) and d) fall only under the competence of the specialised subunits of the Ministry of Interior, National Anticorruption Centre and the Security and Intelligence Service of the Republic of Moldova.

(3) The specialised subunits of the authorities which conduct special investigative activity, within the limit of their competence, have the right to collect necessary information which characterises the persons exposed to verification on the following:

- a) access to information which constitutes state secret;
- b) admittance to employment at duty stations which constitute a high risk for the life and health of people;
- c) admittance at the organization and carrying certain special investigative measures or access to materials received during the carrying of these actions;
- d) establishment or maintenance of cooperation relationships at the organization and carrying of special investigative measures;
- e) review by the License Chamber of the application for a license of private detective and/or private security activity;
- f) ensuring internal security.

**Article 8.** The chiefs of the specialised subunits of the authorities which conduct special investigative activity

(1) The chief of the specialised subunit of the authority which conducts special investigative activity, hereinafter called *specialised subunit*, distributes the documents pursuant to which the special investigative measures are ordered, coordinates the activity of the investigation officers in subordination and undertakes departmental control over them.

(2) The chief of the specialised subunit authorises the measures provide for at article 18 paragraph 1), point 3) and undertakes monitoring of their enforcement.

(3) The chief of the specialised subunit bears responsibility for the organisation of the activity and for the observance of the timeframes of its performance.

(4) If the special investigative activity is carried by the chief of the specialised subunit, he is holds the rights and obligations of an investigation officer.

(5) While performing the administrative functions, the chief of the specialised subunit gives indications which are mandatory for the investigation officers.

**Article 9.** The investigation officer

(1) The investigation officer is the empowered person who, in the name of the state, undertakes the special investigative measures pursuant to the legislation in force.

(2) While undertaking special investigative measures within the criminal procedure, the investigation officer follows the written indications of the prosecutor or of the criminal investigation officer.

(3) The identity of the investigation officers within the specialized subunits who undertake special investigative measures and participate as under-cover investigators is a state secret and can be disclosed only with the written consent of these officers pursuant to the Law on state secret.

(4) The investigation officer bears responsibility for the undertaking of the special investigative measures he/she is in charge with.

**Article 10.** The group of investigative officers

(1) In case of complex measures, the group of investigative officers may be created:

- a) by the prosecutor, based on the ordinance, in the case when the measures was authorised by the former or the authorisation was asked from the investigative judge;
- b) by the chief of the specialised subunit, with the inclusion of the investigation officers from the same specialised subunit, or by the leader of the authority whose specialised subunit which undertakes the special investigative activity, with the inclusion of the investigation officers from different specialised subunits, if the measure was authorized by the chief of the specialised subunit.

(2) At the moment of creation of the group which undertakes the special investigative activity, the persons specified at paragraph (1) appoint one of the investigation officers as the leader of the group, who coordinates the activity of the investigation officers from the group.

**Article 11.** The obligations of the investigation officer

The investigation officer has the following obligations:

- a) to observe the rights and legitimate interests of the person;
- b) to undertake, within the limit of competence, all the measures to protect the human rights and freedoms, protection of all forms of property protected by law, to ensure the security of the state and public order;
- c) to enforce the ordinances of the criminal investigation officer, written indications or ordinances of the prosecutor and the interim decisions of the court of law;
- d) to inform other authorities which undertake special investigative activity on illegal facts which became known, which are with the competence of these authorities, and to offer them the necessary help;
- e) to respect the conspiracy rules while performing the special investigative activity;
- f) to respect the confidentiality of the personal data which became known during the performance of the special investigative measures;

g) to observe the proportionality between the harmed right and the need of the measure which is carried on.

**Article 12.** The rights of the investigation officer

(1) The investigation officer has the following rights:

- a) to undertake the special investigative measures pursuant to the competence and within the limits prescribed by law;
- b) to establish relations with persons who gave their consent to cooperate in a confidential manner with the specialised subunits;
- c) to use the informational systems which ensure the attainment of the tasks of the special investigative activity;
- d) to use, during the carrying out of the special investigative measures, based on contract or on written consent, the offices, homes, transport means, goods of enterprises, institutions, organisation, military units, as well as other goods of legal and physical persons;
- e) to be exposed to initial and continuous training.

(2) The investigation officer is independent in using the techniques, modalities and tactics of carrying out the special investigative measures.

(3) The investigative officer has the right to refuse the enforcement of the written indications of the prosecutor, of the criminal investigation officer if these are illegal or there are real circumstances which endanger the life of the officer. The refusal to enforce the written indications of the prosecutor is addressed to the hierarchically superior prosecutor.

**Article 13.** The liability of the investigative officer

The investigative officer hold disciplinary, misdemeanour or criminal liability for illegal acts committed during the carrying of the special investigative measure.

**Article 14.** The empowerments of the prosecutor during the special investigative activity

In the course of the special investigative activity the prosecutor has the following competences:

- a) to authorise the special investigative measures which pursuant to the present law are to be authorised by the prosecutor;
- b) coordinates or leads the special investigative measures undertaken within a criminal procedure which he/she authorized or for which the authorization of the investigative judge was requested;
- c) controls the legality of special investigative measures, as well as the results of the special investigative measures which he/she ordered or for which the authorization of the investigative judge was requested;
- d) reviews the complaints on the legality of special investigative measures taken by the investigation officer;
- e) requests the chief of the specialised subunit to appoint investigation officers in the group of investigation officers;
- f) within criminal prosecution, requests the chief of the specialised subunit the carrying on of specific special investigative measures.

**Article 15.** Confidential collaborators

(1) Confidential collaborators are persons who, by means of a verbal or written consent, bind themselves to offer information to the investigation officer, to participate at the preparation and carrying on of special investigative measures, as well as to contribute in any other way, not prohibited by law, to the special investigative activities.

(2) The involvement of confidential collaborators in conducting special investigative measures may take place free of charge or on the basis of a fee.

(3) The investigation officers may, depending on the case, conclude agreements on behalf of the authority whose subunit performs special investigative activity.

(4) The confidential collaborators are obliged to keep confidential the information which became known to them in the course of the special investigative measures and are obliged to present truthful information.

(5) Aiming at ensuring the security of confidential collaborators, their family members and their relatives it is allowed to undertake special investigative measures to ensure their protection as provided by the law. The data on the confidential collaborator may be made public only with the latter's written consent.

(6) The investigation officers are forbidden to involve in the special investigation activity as confidential collaborators members of Parliament, judges, prosecutors, criminal investigation officers and attorneys.

(7) The activity of the confidential collaborators is under the control of the chiefs of authorities whose subunits undertake the special investigative activity and of the chiefs of the respective specialised subunits.

**Article 16.** The assistance offered to the subjects of special investigative activity

(1) Physical and legal persons, irrespective of form of property, are obliged to offer assistance to specialised subunits, to immediately offer at the disposal the requested information, as well as, when possible, movable and immovable goods, other objects and documents necessary for the attainment of the special investigative measures.

(2) The legal entities which provide postal and electronic communication services are obliged to ensure the equipment and necessary technical conditions necessary for the specialised subunits to carry out the special investigative measures, as well as to undertake actions to keep confidential the contents, methods and tactics of these measures.

**Article 17.** The guarantees and the social protection of investigation officers

(1) The investigation officers enjoy the guarantees of legal and social protection of the agents of the authorities where they are employed.

(2) Nobody has the rights to interfere in the legitimate actions of the investigation officers, with the exception of the persons specifically empowered by law.

### **Chapter III THE SPECIAL INVESTIGATIVE MEASURES**

#### **Section 1 The procedure of ordering the special investigative measures**

**Article 18.** The special investigative measures

(1) In order to attain the tasks provided for by the present law the following special investigative measures may be carried on:

1) with the authorisation of the investigative judges, at the request of the prosecutor:

- a) research of domicile and/or instalment in it of equipment which ensure the audio and video surveillance and recording, photo and videotaping;
- b) surveillance of domicile by means of technical means which ensure recording;
- c) communication and images interception and recording;

- d) arrest, research, transfer, search or seizure of postal correspondence;
- e) monitoring of connexions to telegraphic and electronic communications;
- f) monitoring or control of financial transactions and access to financial information;
- g) documentation with the use of technical methods and means, as well as the localisation of surveillance via the global positioning system (GPS) or via other technical means;
- h) collection of information from providers of electronic communication services;

2) with the authorisation of the prosecutor:

- a) identification of the subscriber, owner or user of an electronic communications system or of an access point to an information system;
- b) visual surveillance;
- c) control of transfer of money or other extorted goods;
- d) under-cover investigation;
- e) trans-border surveillance;
- f) controlled delivery;
- g) collection of samples for compared research;
- h) research of objects and documents;
- i) controlled purchase;

3) with the authorisation of the chief of the specialised subunit:

- a) questioning;
- b) collection of information about persons and facts;
- c) identification of the person.

(2) The list of measures specified at paragraph (1) is exhaustive and may be amended only by means of law.

(3) The measures provided for at paragraph (1) point 1), as well as those provided at paragraph

(1), point 2) letters c), e) and f) are carried out only within a criminal procedure, pursuant to the Criminal Procedure Code of the Republic of Moldova. The other measures provided for at paragraph (1) point 2) are carried out both within and outside of a criminal procedure. The measures provided for at paragraph (1) point 3) are carried out outside of the criminal procedure.

(4) The special investigative measure provided for at paragraph (1) point 2) letter c) is carried out only by the specialised subunits of the Ministry of Interior and of the National Anticorruption Centre.

(5) While undertaking the special investigative measures the use of informational systems, video and audio recording equipment, photo and videotaping equipment, other technical means is available if they have been authorised as provided by the law.

(6) The organisation, methods of undertaking the special investigative measures, the internal authorisation procedures, rules of drafting minutes on the managements, storage and disposal of obtained materials, the measures to ensure their integrity and confidentiality and of the confidentiality of the special investigative activities, the rules of conduct of the under-cover operations and on the management and administration of the under-cover activity, the methods of registration of special files, as well as the use of financial resources allocated for the carrying out of special investigative measures are prescribed in a common set of regulations of the authorities which undertake special investigative activity in agreement with the Prosecutor General's Office.

**Article 19.** The grounds to conduct special investigative measures

(1) The grounds to conduct special investigative measures are:

- 1) unclear circumstances related to the initiation of criminal prosecution;

2) information which became available with respect to:

- a) the illegal act at the stage of preparation, to be committed or committed, as well as the persons who prepare it, are about to commit it or have committed it;
- b) the persons who avoid criminal prosecution bodies or the court of law, or who avoid the enforcement of a criminal penalty;
- c) persons missing and the need to establish the identity of unidentified corps;
- d) circumstances which endanger the public order, military, economic, ecologic or other type of state security;
- e) circumstances which endanger the security of the under-cover investigator or the security of the members of his/her family;

3) procedural acts of the criminal investigation officer, of the prosecutor or of the investigative judge in criminal cases in their jurisdiction and under review;

4) the notifications from international organisations and law enforcement authorities from other states pursuant to the international treaties the Republic of Moldova is a party to;

5) the report of the investigation officer on the circumstances which endanger personal security, the security of his/her family and of persons close to him/her.

(2) The special investigative measures are authorised and are carried out when the following conditions are cumulatively met:

- a) the attainment of the tasks of the criminal procedure is impossible by other means or there is a danger for state security; and
- b) the special investigative measure is proportionate with the restriction of fundamental human rights and freedoms.

**Article 20.** The procedure of authorisation of special investigative measures

(1) The special investigative measures specified at article 18 paragraph (1) point 1) are authorised pursuant to the Criminal Procedure Code of the Republic of Moldova.

(2) The special investigative measures specified at article 18 paragraph (1) point 2) are authorised ex officio by the prosecutor or at the request of the criminal investigation officer, of the investigation officer or the chief of the specialised subunit within a specially created and registered file. The ordinance of the prosecutor will include:

- a) the specifically authorised measure;
- b) the duration of authorisation of the measure;
- c) the identity attributed to the under-cover investigator, as well as the activities which he/she will undertake;
- d) the surname, name, identification number of the persons exposed to a special investigation measure or the his/her identification data, if they are known;
- e) the reason to conduct the special investigative measure;
- f) the information on the technical means necessary to carry out the special investigative measure.

(3) The measures provided for at article 18 paragraph (1), point 3) are ordered ex officio via an indication from the chief of the specialised subunit, as well as at the request of the investigation officer, criminal investigation officer or the prosecutor.

(4) The authorised special investigative measures must commence at the date indicated in the enforcement document or the latest at the date of expiry of the period for which it was authorised.

(5) The investigation officer who carries out the special investigative measures within one month from the date of endorsement or within the time limit prescribed in the endorsement document will inform via a report the prosecutor, or, if applicable, the chief of the specialised subunit who authorised the special investigative measure, on the obtained results from the implementation of the special investigative measures.

(6) If during the examination of the report, the prosecutor or the chief of the specialised subunit establishes that the conditions to carry out the special investigation measure are not met or that by the respective measure the rights and legitimate interests of persons are disproportionately or obviously breached, he/she orders its termination.

(7) The special investigative measure is ordered for a period of 30 days, with the possibility of reasoned extension of up to 6 months. Each extension of the duration of the special investigative measure may not exceed 30 days. If the duration of authorization of carrying out the special investigative measure was extended up to 6 months, it is prohibited to repeatedly authorize of the special investigative measure on the same grounds and on the same subject, with the exception of use of under-cover agents or when new circumstances are being brought, as well as of cases of research of facts related to the investigation of organized crime and financing of terrorism.

(8) The prosecutor, or, if applicable, the chief of the specialised subunit will order the termination of the special investigative measure before the expiry of the period for which it was authorised immediately after which the grounds and reasons which justified it have disappeared.

(9) If there are no grounds to carry on with the special investigative measure, the investigation officer requests the prosecutor, or, if applicable, the chief of the specialised subunit to immediately terminate these measures.

#### **Article 21.** The special file

(1) When carrying out the special investigative measure, the investigation officer is obliged to open a special file where all the accumulated materials are stored. The opening of the file is exposed to mandatory registration.

(2) The special file may not serve as grounds for limitation of human rights and freedoms provided for by law.

(3) The categories of special files, the method of management, closure and destruction are provided for by departmental normative acts of the authorities whose specialised subunits undertake special investigative activity.

(4) As an exception from paragraph (3), the special files which contain state secrets are destroyed after their disclosure pursuant to the Law on state secret.

(5) Each special file will contain a list of persons who accessed the materials of the file, where it is mentioned:

- a) the name and surname of the person;
- b) the held position;
- c) the day, month, year and hour of access to the file and the day, month, year and hour of the conclusion;
- d) the signature of the person.



**Article 22.** Registration of special investigative activity

(1) The investigation officer who carries out the special investigative measure drafts minutes for each measure authorised by the investigative judge or by the prosecutor, which contains the following:

- a) the place and date of the measure, as well as the hour of commencement and hour of termination;
- b) the function, name and surname of the subject who drafts the minutes;
- c) the name, surname and the status of the persons who have participated at the carrying out of the measures, and, if applicable, their addresses, objections and explanations, with the exception of data on confidential collaborators;
- d) the detailed description of the acknowledged facts, as well as the actions taken during the carrying out of the measure;
- e) the note on taking photos, video-recording, audio recording, the use of technical means, the conditions and methods of their use, the objects exposed to these means, as well as the obtained results.

(2) The minutes are accompanied by a sealed envelope with the data carrier which contains the results of the special investigation measures.

(3) The minutes and the data carrier is part of the special file, created as provided by the law.

(4) At the termination of the special investigative measure or upon the request of the prosecutor, the investigation officer who carried the measure transmits to the former the minutes, to which all the accumulated materials during the authorised special investigative measure are attached. The prosecutor examines and reviews via an ordinance the legality of enforcement of the undertaken measure.

(5) If it is established that the special investigative measure was undertaken with an obvious breach of human rights and freedoms or that the investigation officer overstepped the limits of the authorisation ordinance, the prosecutor declares void the undertaken measure and orders via an ordinance the immediate destruction of the data carrier and the materials accumulated in the course of the special investigative measure. The ordinance of the prosecutor may be appealed at the hierarchically superior prosecutor.

(6) If via an ordinance the legality of the special investigative measure is acknowledged, the prosecutor informs the persons who have been exposed to the special investigative measure.

(7) From the moment of notification provided for at paragraph (6), the person exposed to a special investigative measure has the right to get acquainted with minutes of the carried special investigative measure and the ordinance of the prosecutor on the legality of the undertaken measure.

(8) The special investigative measures authorised by the chief of the specialised subunit are noted down in a report and the data is presented to him/her.

**Article 23.** Access to informational systems

The investigation officers, limited by the special file, have free access to the informational systems' data, with the exceptions provided in the respective laws.

**Article 24.** The use of the results of the special investigative measures

(1) The results of the special investigative measures may serve as grounds for carrying out other special investigative measures to prevent crime and ensure the security of the state, public order, as well as proof if they have been carried out inside a criminal case.

(2) The information about the forces (with the exception of the persons who offer support to the authorities who undertake special investigative measures), the means, sources, methods, plans and the results of the special investigative activity, as well as on the organisation and the tactics of the special investigative measures, which is state secret, may be disclosed only pursuant to the legislation in force.

(3) If the investigation officer establishes a reasonable doubt on a committed crime or preparation for a crime, he/she immediately sends via a report all the materials to the criminal prosecution body.

(4) The use of the results of a special investigative measure specified at article 18 paragraph

(1), point 2) from a special file into another special file is possible only with the authorisation of the prosecutor who authorised the initial measure.

**Article 25.** The confidentiality of data resulting from the special investigative measures

(1) All the data accumulated during the carried special investigative measure is official information with limited access or constitutes a state secret.

(2) Any disclosure of the data specified at paragraph (1) implied liability provided for by law.

**Article 26.** The procedure of challenging the special investigative measures undertaken outside the criminal procedure

(1) The ordinance of the prosecutor by means of which the special investigative measure was authorised or by means of which the legality of the measure was confirmed may be appealed to the hierarchically superior prosecutor by:

- a) the investigation officer who requested the authorisation of the special investigative measure and/or who carried out the special investigative measure;
- b) the person whose fundamental rights and freedoms, as a result of the carried special investigative measure, have been breached.

(2) The persons mentioned at paragraph (1) have the right to appeal the ordinance with respect to:

- a) the refusal of the prosecutor to authorise the special investigative measure;
- b) the legality of enforcement of the special investigative measure;
- c) annulment of the results of the special investigative measure.

(3) The appeal application is addressed to the hierarchically superior prosecutor within 15 days from the day the ordinance was brought to the knowledge of the persons and is presented directly to the prosecutor or to the prosecutor who issued the contested act. If the appeal application was presented to the prosecutor who issued the contested act, he/she is obliged to present to the hierarchically superior prosecutor within 48 hours from receipt along with his/her explanations, the minutes of the carried special investigative measures and, if applicable, the materials accumulated which are linked to the respective measure.

(4) In order to ensure the review of the appeal, the investigation officer or the chief of the specialised subunit will offer at the disposal of the hierarchically superior prosecutor the necessary materials pertinent to the appeal, with the exception of the data on the persons who substantially contributed to the carrying out of the special investigative measure.

(5) The hierarchically superior prosecutor examines the appeal within 5 days and decides:

a) the annulment of the ordinance of the prosecutor, with the indication of the actions to be taken by the former; or

b) maintaining the ordinance in force.

(6) The ordinance of the hierarchically superior prosecutor is irrevocable.

(7) The special investigative measures authorised by the chief of the specialised subunit are appealed to the chief of the authority whose subunit undertakes special investigative measures.

## **Section 2**

### **Defining the special investigation measures**

**Article 27.** The special investigative measures which take place only during a criminal prosecution

The special investigative measures which are authorised only within a criminal prosecution are carried out pursuant to the provisions of the Criminal Procedure Code of the Republic of Moldova.

**Article 28.** Identification of the subscriber, owner or user of an electronic communications system or of an access point to an information system

(1) Identification of the subscriber, owner or user of an electronic communications system or of an access point to an information system is a request to a service provider to identify the subscriber, owner or user of an electronic communications system, of a communications means or an access point to an information system or to offer information on the fact if a certain communications means or a certain access point to an information system is used or is active or was used or was active at a certain date.

(2) The ordinance to initiate the special investigative measure, will contain the following elements besides the ones provided for at article 20 paragraph (2):

a) identification data of the service provider who has or who controls the information specified at paragraph (1);

b) identification date of the subscriber, owner or user, if known, motivation of compliance with the conditions of initiation of the special investigative measure;

c) note on the obligation of the person or of the service provider to immediately communicate, following the confidentiality condition, the requested information.

**Article 29.** Visual surveillance

Visual surveillance is disclosure and registration of the actions of the person, of certain real estate, of transport means and of other objects.

**Article 30.** Under-cover investigation

(1) The under-cover investigation is authorised for a period necessary to discover the fact of existence of a crime.

(2) The under-cover investigation is initiated via an ordinance, in which the following will be mentioned:

- a) the authorised special investigative measure;
- b) the period for which the special investigative measure was authorised;
- c) the identity attributed to the under-cover investigator, as well as the activities he/she will perform;
- d) the person or the persons exposed to the special investigative measure or the their identification data, if these are known.

(3) If it is considered necessary to use the under-cover investigator, the technical means to obtain photos or audio and video recordings, the prosecutor notifies the investigative judge with the purpose to obtain an authorisation for the respective special investigative measure.

(4) The under-cover investigation are employees, specifically nominated for this purpose, within the Ministry of Interior, the Intelligence Service, the National Anticorruption Centre, Department of Penitentiary Institutions of the Ministry of Justice or are persons involved to undertake a specific special investigative measure. The under-cover investigators undertake special investigative measures during the period mentioned in the ordinance of the prosecutor.

(5) The under-cover investigator collects the data and information and gives them in their entirety at the disposal of the prosecutor who authorised the special investigative measure.

(6) The under-cover investigator is prohibited to provoke the committing of crimes.

(7) The public authorities may use or may offer the under-cover investigator any documents or objects necessary to attain the authorized special investigative measure. The person that uses or presents documents or objects is not liable for these acts.

(8) The under-cover investigators may be questioned as witnesses during a criminal procedure. Under reasoned grounds, the under-cover investigator may be exposed to hearings pursuant to the Law on the protection of witnesses and other participants in criminal procedure.

### **Article 31.** Collection of samples for compared research

The collection of samples for compared research implies the identification, physical collection and storage of the material data carrier (objects, substances) with the purpose to compare them with the materials which are already at the disposal of the specialised subunits or with the purpose to subsequently identify identical objects with the objects which present special interest.

### **Article 32.** Research of objects and documents

(1) The research of objects and documents implies their assessment from the scientific point of view to depict the signs of criminal activity, the studying of the contents, the comparison with other objects and necessary acts to determine the objective reality.

(2) The research of objects and documents is done by the investigation officers with the participation, if applicable, of the specialist who holds the necessary knowledge to study them.

### **Article 33.** Controlled purchase

The controlled purchase implies the purchase of services or goods in free, limited or forbidden circulation, with the purpose to reach certain technical and scientific conclusions or forensic conclusions, or with the purpose to investigate a crime or identify the perpetrators who committed this crime.

**Article 34. Questioning**

The questioning is a direct communication of the investigation officer and of other persons empowered by the former with the persons who hold information about facts, events, circumstances or persons who are of interest.

**Article 35. Collection of information about persons and facts**

The collection of information about persons and facts is obtaining information about physical and legal persons, about fact, events, circumstances which are of interest by directly studying documents, materials, databases, presenting requests to physical and legal entities who hold the respective information.

**Article 36. Identification of the person**

The identification of the person is establishing identity via static signs (fingerprints, blood and saliva composition, odour and prints left at the scene of the crime) and dynamic (walk, gestures, mimics etc.), as well as via the photo-robot and other methods which allow high probability of identification of the person.

#### **Chapter IV FINANCIAL ASSURANCE OF SPECIAL INVESTIGATIVE ACTIVITY**

**Article 37. Financial assurance of the special investigative activity**

(1) The authorities whose specialised subunits are empowered with the carrying out of special investigative activity are allocated from the state budget with financial means to attain the aims of the present law.

(2) The control over the expenditures for the special investigative measures is performed by the chiefs of the respective authorities, as well as by a representative of the Ministry of Finance especially appointed, pursuant to special rules approved by the Government.

#### **Chapter V THE OVERSIGHT AND COORDINATION OF THE SPECIAL INVESTIGATIVE ACTIVITY**

**Article 38. Parliamentary oversight**

(1) The parliamentary oversight of the special investigative activity is performed by the Standing Committee on National Security, Defence and Public Order.

(2) The authorities that carry out special investigative activity are obliged to present to the Prosecutor General, until 15 of January of the next year, a report on the special investigative activity, which will contain:

- a) the number of authorised special investigative measures;
- b) the number of annulled special investigative measures;
- c) the results of the special investigative measures.

(3) The Prosecutor General, based on the presented reports and on the basis on the information the Prosecutors' Offices hold, presents the Standing Committee of National Security, Defence and Public Order the final report of the special investigative activity until the 15<sup>th</sup> of February of each year.

(4) The Standing Committee of National Security, Defence and Public Order may request, within the limits of the competence, any supplementary information on the special

investigative activity, with the exception of special files, if it considers that the presented report is incomplete.

**Article 39.** Control undertaken by the prosecutor

(1) The control over the enforcement of the present law is undertaken by the hierarchically superior prosecutors.

(2) The control is undertaken based on the complaints presented by the persons whose rights and legitimate interests have allegedly been violated or ex officio in case if the special investigative activity was authorised by the prosecutor or the authorisation was requested from the investigative judge.

(3) The hierarchically superior prosecutors who undertake the control have the right to access information which constitutes a state secret as provided by the legislation.

(4) The activity of the confidential collaborators is under the control of the Prosecutor General or of another prosecutor specially appointed by means of ordinance of the Prosecutor General.

**Article 40.** Departmental control

(1) The departmental control over the activity of the investigation officers is undertaken by the chief of the body which carries out the special investigative activity.

(2) The chief of the body which carries out the special investigative activity undertakes the control via requests for control of special files.

**Article 41.** Coordination of the special investigative activity

(1) The special investigative activity is coordinated by the Coordination Council, created under the Prosecutor General.

(2) The Coordination Council is comprised of the Prosecutor General, who is the Chairman of the Council, and the chiefs of the specialised subunits. The Coordination Council carries out its activity based on Regulations approved by the Prosecutor General.

## **Chapter VI FINAL AND TRANSITIONAL PROVISIONS**

**Article 42.**

(1) The present law enters in force after 6 months from its publication.

(2) The Government will present within 3 months from the publication of the present law to the Parliament proposals to adjust the legislation in force to the present law.

(3) The pending special investigative measures will be implemented, until their termination in accordance with the provisions of the Criminal Procedure Code of the Republic of Moldova and of the Law no. 45-XIII from 12 April 1994 on operative investigative activity.

(4) At the date of entry in force of the present law, the persons who pursuant to the Law no. 45-XIII from 12 April 1994 on the operative investigative activity have been involved in the specialised subunits will continue to be involved as investigation officers.

(5) At the date of entry in force of the present law the Law no. 45-XIII from 12 April 1994 on operative investigative activity (republished in the Official Journal of the Republic of Moldova, 2003, no. 11-13, article 38), with the subsequent amendments and completions is abolished.

*CHAIRMAN OF THE PARLIAMENT*

*Marian LUPU*

*Chisinau, 29 March 2012.*

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