

Yeskov Serge V.,
Centre for European Reforms Studies,
Grand Duchy of Luxembourg

LAW ENFORCEMENT AGENCIES AND TELECOMMUNICATIONS SERVICE PROVIDERS COLLABORATION IN EXECUTING REQUESTS FOR INTERCEPTION OF PRIVATE COMMUNICATIONS

Recent developments in Ukraine's foreign policy are a clear indication of gravity for the collective security structures, the economic and legal space of the European community. It is clear that in addition to a number of new opportunities, the process of integration and deepening of cooperation will also provide a reverse side - the inevitability of reforming and harmonizing the provisions of national legislation with certain common standards in the European community. This suggests that the problem of the compliance of domestic experience with the regulation of intervention in private communication with European standards has a direct link with important and practical tasks.

Taking into account this circumstance, as a goal of the present publication, we will select the coverage of the normative practice of the Council of the European Union (hereinafter - the Council of the EU) in the context of regulating relations between law enforcement authorities and telecommunication service providers regarding the execution of requests for interference in private communication, as well as comparing domestic experience with this practice.

Since the mid-1990s, the EU Council has occasionally raised issues of privacy protection in the context of the development of cutting-edge technologies. The basic regulatory documents that allow access to EU Council standards for regulating relations between law enforcement authorities and telecommunication service providers regarding the execution of requests for interference with private communication are the EU Council Resolution of 17 January 1995 on the lawful interception of telecommunications, Resolution of the Council of the EU of June 20, 2001 "On operational requests of law enforcement authorities regarding public telecommunication networks and services" and Directive No. 2002/58 / EC of the European Parliament and of the Council of the EU of 15 December 1997 "On the Processing of Personal Data and Protection of Privacy in the Electronic Communications Sector".

If to consider these documents in chronological order, then the first of them, the Resolution of the Council of the European Union of 17 January 1995 "On the lawful interception of telecommunications" [1, pp. 1-6], devoted to provide the necessary platform for the interaction of providers of telecommunication services and law enforcement agencies to meet operational

requests for interception of information. According to the resolution, network operators (service providers) should provide law enforcement authorities with the ability to use one or more interfaces, where the content of intercepted signals can be transmitted to law enforcement checkpoints.

In the case, however, if network operators (service providers) use coding, archiving or encrypting telecommunications traffic, law enforcement authorities provide intercepted information in unencrypted form.

Depending on the level of awareness of law enforcement authorities, network operators (service providers) are required to report on their request: a) a person controlled by object interception, service number or other identifier; b) information on the services and functions of the telecommunication system used by the controlled object of interception and supplied to him; c) information on the technical parameters of the transfer to the checkpoints of law enforcement agencies [1].

The basic conditions for the interception of information in telecommunication networks, which are technically and organizationally provided by operators (service providers), are: 1) the secrecy of this process from the object of interception and from any other outsider, and the preservation of external signs of unchanging conditions for the operation of telecommunication equipment in general; 2) the security and confidentiality of the information relevant to the interception, the number of these interceptions, the inadmissibility of its unauthorized and improper use; 3) targeting, that is, the broadcast of the intercepted information only to the competent authority specified in the permit for interception; 4) efficiency, which provides for the speed of reaction of network operators (service providers) to the lawful requirements of law enforcement agencies; 5) the possibility of broadcasting several simultaneous interceptions. Multiple interceptions may be required to allow observers to be monitored by more than one law enforcement agency in the context of the protection of information about which authorities intercept and the confidentiality of investigations; 6) the reliability and quality of interception, which is equal to the reliability of the services provided to the controlled object, and compliance with the performance standards established for a particular service or type of communication.

The postulate on the importance of obtaining tacit access to telecommunications for the purpose of effective counteraction to crime, for revealing of serious crimes and prosecution of criminals, was developed also in another document of the Council of the European Union - Resolutions "On operational requests of law enforcement authorities regarding public telecommunications networks and services" [2, pp. 89-93]. Noting that the preliminary resolution on these issues ("On the lawful interception of telecommunications") was adopted at a time when the switching of channels was dominant in telecommunication sphere (and not switching of packets - a more modern way of switching, when one physical connection can exchange of

data by many nodes), the Council of the EU in a resolution "On Operational Inquiries of Law Enforcement Agencies for Public Telecommunication Networks and Services (ENFOPOL)" has consolidated a number of explanations and clarifications based on the scientific and technological process in this field. In this context, such standards, protocols, networks and services are provided, such as PSTN, ISDN (Integrated Services Digital Network), GPRS, UMTS (Universal Mobile Telecommunication System), xDSL, TETRA (Trans European Radiocommunication Standard with Automatic channel allocation), GSM, CDMA, IS-41, AMPS, S-PCS (personal satellite communication system), etc. In principle, in its internal content, the EU Council resolution on Operational Police Requests for Public Telecommunication Networks and Services (ENFOPOL) is a commentary on previous decisions of the EU Council on interception of telecommunications [2].

The Directive 2002/58 / EC on the processing of personal data and the protection of privacy in the area of electronic communications, adopted by the EU Council and the European Parliament, is also of considerable interest in the study of the conceptual framework for regulating interference with private communication. The purpose of this directive is to harmonize the provisions of national legislation on guarantees of an appropriate level of protection of fundamental rights and freedoms, and in particular the right to privacy and confidentiality of privacy information in connection with the processing of personal data in the field of electronic communications and to ensure free movement such data, the free movement of equipment for electronic communications and electronic communications services [3, pp. 37-47].

So the experience of regulating the relationship between telecommunications network providers and law enforcement agencies can be a useful example for Ukraine, since the transparency and detail that has come to regulate such a sensitive business as interference with private communication needs attention and worthy borrowing.

Separate fragmentary attempts to regulate certain aspects of interference in private communication are carried out in the "Procedure of interaction between the Security Service of Ukraine and the Administration of the State Service for Special Communications and Information Protection of Ukraine in the organization of certification of technical means of telecommunications for compliance with the requirements of normative documents for technical means for the implementation of the responsible authorities operatively -search activities in telecommunication networks of general use of Ukraine ", however, how can you be sure of the high school, driven experience, this is not enough. This, in our opinion, calls for further attention of scientists to the problem of improving the national legislation concerning the protection of the right to privacy and the possibilities for limiting it, in the context of international standards. The main promising directions of scientific research and the epicenters of applying creative efforts may, in our opinion, include: detailed

regulation of the relations between telecommunication service providers and law enforcement agencies, as well as the introduction of effective parliamentary control in the field of secret human rights restrictions on the privacy of communication, including the development of an appropriate methodological bases.

Literature

1. Council Resolution of 17 January 1995 on the lawful interception of Telecommunications, Official Journal of the European Communities, C 329, 4.11.1996, pp. 1-6.

2. Council Resolution of 20 June 2001 on law enforcement operational needs with respect to public telecommunication networks and services, Official Journal of the European Communities, C 107, 03.05.2002, pp. 89-93.

3. Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), Official Journal of the European Communities, L 201, 31.7.2002, pp. 37-47.

УДК 340.12(043.2)

Лобжанидзе Г., д.ю.н., профессор,
Тбилисский учебный университет Гурама Таварткиладзе,
г. Тбилиси, Грузия

Челидзе С., д.ю.н., ассоциированный профессор,
Кавказский международный университет, г. Тбилиси, Грузия

МЕТОДОЛОГИЧЕСКОЕ ОСМЫСЛЕНИЕ ФИЛОСОФСКО-ПРАВОВЫХ КОНЦЕПЦИЙ В СОВРЕМЕННОЙ ФИЛОСОФИИ ПРАВА

Любая отрасль науки или учебная дисциплина имеет собственные цели и задачи. В нашем случае философия права, как синтез общих проблем двух независимых общественных дисциплин, имеет свой объект исследования. Философия права, говорит М. Майер, имеет те же задачи, что и философия, но она их решает в своей области – позитивном праве.

Проф. Ал. Вачеишвили разделяет мнение тех учёных, которые считают, что «рядом с наукой о праве стоит философия права, которая связывает её с общей философией» [1, 8]. По мнению Майера, принципы права в первом значении исследует общая теория, которая является лишь суррогатом философии права [2, 5, 6]. Он считает, что философия права связана с социальной и культурной философией, где она находит свои основы. Ясно, что с этой точки зрения общая теория права не сможет выполнить роль философии права [3, 6]. Философия права представляет