

# Slovenian criminal intelligence activity (CIA) and protection of privacy

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# Basic terminology

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- One of the latest trends in policing
- Proactive approach towards fighting criminal activity
- Originating from Anglo-American systems
- Collected data should serve for determining priorities regarding Police work (prevention and repression of criminal activity)
- CIA circle: identification of needs, **collection**, assessment, processing, analysis and production, dissemination of data

# Normative framework - EU

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- Declaration on combating terrorism (2004):

exchange of data, relevant for repression of terrorism

between judicial authorities of Member states and Europol

as soon as data available

- Numerous legal acts

- Council conclusions on the creation and implementation of a EU policy cycle for organised and serious international crime (2010)

establishing multi-annual intelligence circle for organised and serious international crime

to tackle the most important criminal threats in a coherent and methodological manner through optimum cooperation between the relevant services of the Member States, EU Institutions and EU Agencies as well as relevant third countries and organisations

Member States should integrate the actions developed within the European policy cycle whenever relevant into their national planning and to allocate dedicated resources to support a common EU approach

# Normative framework - Slovenia

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- EU Member State-should adopt to the EU CIA
- 2006: assessment that Slovenia does not have CIA system → increased normative activity
- Resolution on National plan on the Prevention and Combating of Crime for the period 2007-2011: establishment of CIA is included
- Resolution on National Security Strategy of the Republic of Slovenia (2010): effective preventive measures for fighting criminal activity, including CIA
- Resolution on National plan on the Prevention and Combating of Crime for the period 2012-2016: establishment of regional units for CIA, drafting a procedure for data processing and its implementation, effective data flow and regulated data access

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- Police Act (1998): did not regulate CIA, Police Tasks and Powers Act (2013, 2015, 2017) does:

#### Article 11

##### **(Criminal acquisition and evaluation of information)**

- (1) Criminal acquisition and evaluation of information shall be a process of collecting, evaluating and analyzing personal and other data on criminal activities of **natural persons and legal entities** and criminal organisations that facilitate the decision making and planning related to police tasks aimed at prevention, detection and investigation of **criminal offences, the perpetrator of which is prosecuted ex officio**.
- (2) In acquiring data referred to in the preceding paragraph, the police shall cooperate with persons who voluntarily provide the police with operational information about criminal offences, their perpetrators and other activities suggesting elements of criminal offences.
- (3) Criminal acquisition and evaluation of information may not incite criminal activities. (entrapment defence)
- (4) The police shall ensure persons referred to in the second paragraph of this Article safety and anonymity if this is in their interest and in accordance with the provision of Article 118 of this Act.
- (5) The method of criminal acquisition and evaluation of information and cooperation with persons shall be determined by the Director General of the Police through an internal act.

# CIA sources

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- Police informants

Regulated by police legislation

Problematic distinction between:

- Police informant
- Undercover police coworker according to CPA
- Citizens according to CPA

Informant	Citizen	Undercover police coworker
<p>A person, who voluntarily gives the Police operational information regarding criminal offences, perpetrators and other activities</p> <p>Anonymity</p> <p>Potential payment</p>	<p>According to article 148 Police could seek information from citizens – reasons for suspicion for criminal offence</p>	<p>Written order of a State Prosecutor upon a Police proposal, if strict CPA conditions fulfilled</p>
<p>Proactive activity-without concrete criminal offence</p>	<p>Reactive activity of Police and State Prosecutor after criminal offence was committed (reasons for suspicion, reasonable grounds for suspicion)</p>	
<p>Before the Police activity in criminal procedure</p> <p>Not necessarily: could be used by Police also in pre-trial procedure-according to article 148 of CPA</p>	<p>After the criminal offence has been committed, after CIA</p>	
<p>Voluntarily giving information to the Police – problematic, when paid by Police for information (monetary or lower sentence)</p>	<p>No necessarily voluntary – potential compulsory appearance</p>	
<p>Occasional provision of information</p> <p>Self-initiative, unplanned, without Police concrete direction, instruction, supervision</p> <p>No contract with Police</p> <p>Potential anonymity and security provisions</p> <p>Registered with Police</p>		<p>Planned and continuous data collection about the suspect and his criminal activity</p> <p>About concrete criminal offence</p> <p>Supervised and directed by Police</p> <p>Written order of State Prosecutor</p> <p>Contract with Police</p> <p>Case law-relevant: actual circumstances</p>



# collecting information from detainees

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- The Police
- upon written motion
- permission from the investigating judge or the presiding judge
- if that is necessary for detecting other criminal offences of the same person, his accomplices or criminal offences committed by other perpetrators
- during the period of time, and in the presence of the person designated by the investigating or presiding judge
- Police Tasks and Powers Act does not regulate it as *lex specialis* – 148/8 CPA relevant

# Public sources

- Police Tasks and Powers Act : chapter 5: DATA COLLECTION AND PROCESSING
- Any data collection should be made according to chapter 5 (or any potential *lex specialis* legal basis)
- Proposal of an Amendment to Police Tasks and Powers Act (2015): all public sources, all data, including personal
- OSINT programmes (programmes for processing (public) data):

Article 122 (Automated processing of personal and other data)

(1) The police must **not** use any **automated processing of personal or other data** (processing of personal or other data by means of information technology) that could **result in a decision being adopted, motion or criminal complaint being filed or report being drawn up** concerning a natural or legal person or other entity that could, if no further action or decision was taken by a competent police employee, **prejudice the rights or obligations of the natural or legal person or other entity**.

(2) The police **must not make personality profiles of persons** to whom personal data refer through automated processing of personal or other data, in particular the aggregation or comparison of personal data from one or more personal data filing systems, records, public or other registers or other data bases containing personal data, so that it could be concluded, if no action or decision was made by the competent police employee, that the persons concerned have committed or have not committed a certain criminal offence or that the testimony of a certain person is reliable or not. **The use of automated processing of sensitive personal data to make a personality profile of a person shall be prohibited.**

# Scientific works

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- Potential source
- Usually public sources
- Expect works, protected by patent or any other right of industrial property – business secret – could be accessed and processed nevertheless (article 112 of Police Tasks and Powers Act )

# Undercover Police investigation

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- Strictly regulated by CPA: conditions, procedure, data procession
- Classified data according to Classified Information Act until State Prosecutor's initiation of criminal prosecution
- Afterwards: all data to the State Prosecutor – Investigative Judge
- If criminal procedure is not initiated within 2 years of end of measures – destruction of data, notification of person of interest, right to inspect the collected data/report
- If criminal procedure is initiated – notification, right to inspect the data
- Cannot be used for other purposes than for prosecution of the **same** criminal act

# Conclusion

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- Difficult distinction between CIA and pretrial procedure
- ECHR: trend of submitting the IA under article 8 protection – should apply to CIA in Slovenia also
- Different aims: CIA could be basis for criminal procedure  $\neq$  ex officio criminal procedure
- When Police activity is focused on certain person or certain criminal - conditions for pre-trial procedure fulfilled – CPA applies (and not CIA) + procedural safeguards of a suspect in pre-trial procedure
- Mixture/blending of proactive (intelligence) and reactive (police activity) activity / intelligence and police work / powers, typical for certain authorities

Thank you for your attention.

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