

Surveillance Act

Passed 22 February 1994

(RT¹ I 1994, 16, 290),

entered into force 18 March 1994,

amended by the following Acts:

19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329;

17.12.2003 entered into force 05.02.2004 - RT I 2004, 2, 7;

17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591;

19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375;

12.06.2002 entered into force 01.09.2002 - RT I 2002, 56, 350;

06.06.2001 entered into force 12.07.2001 - RT I 2001, 58, 353;

20.12.2000 entered into force 01.03.2001 - RT I 2001, 7, 17;

20.12.2000 entered into force 01.04.2001 - RT I 2001, 3, 9;

13.12.2000 entered into force 07.01.2001 - RT I 2000, 102, 671;

16.05.2000 entered into force 05.06.2000 - RT I 2000, 40, 251;

19.04.2000 entered into force 01.07.2000 - RT I 2000, 35, 222;

15.12.1999 entered into force 01.01.2000 - RT I 1999, 95, 845;

25.02.1999 entered into force 01.01.2000 - RT I 1999, 31, 425;

21.10.98 entered into force 01.04.99 - RT I 1998, 98/99, 1575;

26.01.99 entered into force 28.02.99 - RT I 1999, 16, 271;

29.10.98 entered into force 30.11.98 - RT I 1998, 101, 1663;

11.06.98 entered into force 16.07.98 - RT I 1998, 61, 981;

13.05.98 entered into force 19.06.98 - RT I 1998, 51, 756;

14.05.98 entered into force 15.06.98 - RT I 1998, 50, 753;

06.05.98 entered into force 07.06.98 - RT I 1998, 47, 698;

02.12.97 entered into force 03.01.98 - RT I 1997, 93, 1557;

22.10.97 entered into force 01.01.98 - RT I 1997, 81, 1361;

27.06.96 entered into force 26.07.96 - RT I 1996, 49, 955;

26.01.95 entered into force 02.03.95 - RT I 1995, 15, 173.

§ 1. Purpose of Act

(1) This Act provides for:

- 1) the conditions and procedure for surveillance to guarantee the security of the Republic of Estonia, Estonian citizens and other states and persons, to detect and combat criminal offences against the Republic of Estonia, Estonian citizens and other states and persons, and to guarantee the constitutional rights of such persons;
- 2) restrictions on the constitutional rights of Estonian citizens and other persons in accordance with the Constitution if they are essential for performance of the functions specified in clause 1) of this subsection;
- 3) the procedure for the performance of obligations of the Republic of Estonia which arise from international agreements or membership in international organisations if it requires surveillance.

(2) The provisions of the Administrative Procedure Act (RT I 2001, 58, 354; 2002, 53, 336; 61, 375; 2003, 20, 117; 78, 527) apply to administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act.

(3) Unless otherwise provided for in the Code of Criminal Procedure (RT I 2003, 27, 166; 83, 558; 88, 590), this Act applies to surveillance conducted in criminal procedure.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 1¹. (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 2. Definition of surveillance

Surveillance means the conduct the surveillance activities on the bases and pursuant to the procedure provided for in this Act and the Code of Criminal Procedure.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 3. (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 4. (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 5. Principles of surveillance

(1) Surveillance is based on the principle of combining legality, transparency and secrecy.

(2) Information on the methods, tactics and technical equipment used in surveillance or adapted to surveillance is to be used within an agency and is not subject to disclosure unless the disclosure thereof is necessary to use the collected information as evidence.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) Surveillance shall not be used in the interests of or to discredit political parties or political associations and movements.

(4) Surveillance agencies shall not collect or store information concerning the beliefs of an Estonian citizen against his or her free will.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(5) Surveillance activities are permitted only if the desired purpose cannot be achieved in a manner which less violates the fundamental rights of persons.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(6) Surveillance activities shall not damage the environment or the life, health or property of persons.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 6. Surveillance agencies

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(1) The following are surveillance agencies within the limits of their competence:

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

- 1) the Security Police Board;
- 2) the Police Board;

- 3) the Border Guard Administration;
- 4) the Headquarters of the Defence Forces;
- 5) the Prisons Department of the Ministry of Justice and prisons;
(27.06.96 entered into force 26.07.96 - RT I 1999, 49, 955; 15.12.1999 entered into force 01.01.2000 - RT I 1998, 95, 845)
- 6) the Tax and Customs Board;
(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)
- 7) (Repealed - 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)
- (2) Surveillance agencies shall engage in surveillance activities both directly and through agencies, subordinate units and employees administered by surveillance agencies and authorised to engage in surveillance activities, and through persons recruited for secret co-operation.
(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)
- (3) The head of a surveillance agency shall be responsible for the organisation of surveillance and the legality of the activities thereof in the system subordinate to him or her.
(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)
- (4) Surveillance agencies shall co-operate with each other pursuant to this Act.
(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)
- (5) The Security Police Board is the surveillance agency for pre-trial investigation of criminal matters. The Security Authorities Act applies to the performance of other functions belonging to the competence of the Security Police Board.
(20.12.2000 entered into force 01.03.2001 - RT I 2001, 7, 17; 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 7. Rights of surveillance agencies

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

Surveillance agencies have the right to:

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

1) conduct surveillance activities under the conditions and pursuant to the procedure provided for in § 12 of this Act and Division 8 of Chapter 3 of the Code of Criminal Procedure;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

2) recruit persons for secret co-operation in surveillance activities under the conditions and pursuant to the procedure provided for in § 14 of this Act;

3) collect, store, analyse and use information and establish information systems and databases necessary to ensure the combating and detection of criminal offences provided that the databases are not deemed to be databases within the meaning of the Databases Act (RT I 1997, 28, 423; 1998, 36/37, 552; 1999, 10, 155; 2000, 50, 317; 57, 373; 92, 597; 2001, 7, 17; 17, 77; 2002, 61, 375; 63, 387; 2003, 18, 107; 26, 158; 2004, 30, 204);

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

4) use covert measures which allow persons who have been engaged in surveillance activities, the purpose of the activities and the ownership of rooms and means of transport used to be concealed;

5) use housing, other rooms and property of other persons on the basis of a contract;

6) simulate persons and bodies under the conditions and pursuant to the procedure provided for in § 7¹ of this Act;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

7) plant undercover agents in criminal groups and organisations being monitored and assign undercover agents to interact with individuals being monitored in order to ascertain the nature of criminal plans and activities and influence the abandonment thereof;

8) use their staff employees as undercover agents working in other agencies, enterprises and organisations;

9) recruit qualified persons for surveillance activities with the consent of such persons.

§ 7¹. Simulating person or body

(1) The Police Board, the Central Criminal Police and, in pre-trial proceedings concerning criminal offences, the Security Police Board may simulate the following persons:

- 1) companies or their subordinate units;
- 2) foundations or their subordinate units;
- 3) non-profit associations or their subordinate units;
- 4) sole proprietors.

(2) In order to simulate a person for the purposes of performance of the functions of a surveillance agency, a corresponding entry shall be made in the commercial register or the non-profit associations and foundations register on the basis of an application by the Minister of Internal Affairs. If simulation is no longer necessary, the entry shall be deleted pursuant to the general procedure on the basis of an application by the Minister of Internal Affairs.

(3) The Minister of Internal Affairs shall submit an application for entry of a person in a register at the reasoned request of the Director General of the Police Board, the police chief of the Central Criminal Police or the National Security Police Commissioner. The request shall set out:

- 1) the need to simulate a person;
- 2) the type of person to be simulated;
- 3) the expenses relating to simulation;
- 4) the duration of simulation;

5) the information to be entered in a business file of the commercial register or in the non-profit associations and foundations register (including the application for entry).

(4) The Minister of Internal Affairs shall decide on the simulating of a body for the purposes of surveillance on the basis of facts specified in subsection (3) of this section.

(5) Transactions conducted in the name of a simulated person or body are deemed to be conducted by the surveillance agency.

(6) The head of a surveillance agency shall submit an overview of the activities of the persons and bodies simulated by the surveillance agency to the Ministry of Internal Affairs once every six months as of entry in the register.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 8. Duties of surveillance agencies

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(1) Upon exercising surveillance, surveillance agencies are required to:

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

- 1) collect, store, analyse and use information which is related to crime and the infrastructure thereof;
 - 2) protect the lawful rights and freedoms of Estonian citizens and other persons who have been involved in surveillance activities, persons who have been recruited for surveillance activities and other natural or legal persons who have provided assistance in surveillance activities;
 - 3) protect persons who are or have been engaged in surveillance activities and who are or have been recruited therefor in order to prevent danger to such persons and to the life, health, property, honour and dignity of persons connected with them;
 - 4) ensure the secrecy of co-operation;
 - 5) comply fully with the requirements of legislation providing for surveillance.
- (2) If elements of a criminal offence become evident from information collected as a result of surveillance conducted outside criminal proceedings, a surveillance agency shall

commence criminal proceedings or communicate the information to a body competent to commence criminal proceedings.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 9. Reasons for commencement of surveillance proceeding

(1) The reasons for the commencement of a surveillance proceeding are:

1) the need to collect evidence in criminal proceedings;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

2) evasion of a suspect or accused of a criminal proceeding or evasion of a convicted person of criminal punishment;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

3) the need to collect information for the prevention and combating of criminal offences;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

4) a person goes missing;

5) the need to decide on the access of a person to surveillance information or on permitting a person to work in a surveillance agency;

(22.10.97 entered into force 01.01.98 - RT I 1997, 81, 1361; 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

6) the need to perform security checks in order to decide on permitting a person to work in a surveillance agency or granting a person access to state secrets;

(22.10.97 entered into force 01.01.98 - RT I 1997, 81, 1361; 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

6¹) the need to provide an opinion concerning the compliance of a candidate for judicial office, a candidate for Auditor General, a candidate for Chancellor of Justice, a candidate for Chairman of the Supervisory Board of Eesti Pank, Governor of Eesti Pank and member of the Supervisory Board of Eesti Pank and a candidate for Commander of the Defence Forces with the conditions for the issue of a permit for access to state secrets, unless the person already has the right of access to state secrets by virtue of office;

(06.06.2001 entered into force 12.07.2001 - RT I 2001, 58, 353; 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

7) the need to decide upon the suitability of a police officer for police service or the suitability of persons who apply to the police service or to study on the police training programme for employment in the police service or for study on the police training programme respectively;

(14.05.98 entered into force 15.06.98 - RT I 1998, 50, 753)

8) the need to perform the obligations arising from international agreements and international conventions.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(1¹) Surveillance proceedings specified in clause (1) 7) of this section shall be conducted by the Police Board and the police authorities authorised by the Police Board.

(20.12.2000 entered into force 01.03.2001 - RT I 2001, 7, 17)

(2) The reason for the commencement of a surveillance proceeding may be the need to decide on:

- 1) the issue of an activity licence to work as a private detective;
- 2) the issue of an activity licence or operating permit for gambling;
- 3) the issue of an activity licence to engage in the provision of security services in the case of objects specified in subsection 3 (1) of the Security Service Act (RT I 1993, 75, 1100; 1995, 62, 1056; 1996, 49, 953; 2002, 61, 375);
- 4) the issue of an activity licence to an undertaking to engage in the areas of activity specified in subsection 48 (1) of the Weapons Act (RT I 1995, 62, 1056; 1997, 93, 1564; 1999, 57, 597; 2001, 7, 17; RT III 2001, 26, 280; RT I 2001, 65, 377);
- 5) the issue of a firearms procurement licence or a firearms licence to a citizen of a foreign state or a stateless person;
- 6) the issue of a residence or work permit or the grant of Estonian citizenship;
- 7) the issue of a licence or a General Export Authorisation User Certificate for the import, export or transit of strategic goods or provision of services related to military goods or entry of an undertaking in the state register of brokers of military goods pursuant to the procedure provided for in the Strategic Goods Act (RT I 2004, 2, 7).

(17.12.2003 entered into force 05.02.2004 - RT I 2004, 2, 7)

(3) The need to make a decision specified in subsection (2) of this section is deemed to be the reason for the commencement of a surveillance proceeding if the agency

competent to make the decision finds that the background or reliability of the applicant or information submitted by the applicant raise reasonable doubt, and if the alternative possibilities for verification thereof are exhausted.

(17.12.2003 entered into force 05.02.2004 - RT I 2004, 2, 7)

(4) (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 10. Commencement of surveillance proceeding

(1) If a reason for the commencement of a surveillance proceeding exists, the surveillance proceeding shall be commenced by a reasoned decision made by the head of a surveillance agency or an official authorised by a directive issued by the head of a surveillance agency which is based on the following:

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

1) an application from an investigative body or an order of a Prosecutor's Office in criminal proceedings;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

2) (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

3) an application from another surveillance agency;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

4) an application from the other party to an international agreement of Estonia, if so prescribed in the agreement;

5) an inquiry from Interpol or another international organisation, if the inquiry arises from the obligations of Estonia in the organisation;

6) an application from the head of an agency (except a surveillance agency)

authorised to issue a licence or permit specified in subsection 9 (2) of this Act.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) An application, order or inquiry specified in subsection (1) of this section is not required if the decision to commence a surveillance proceeding is adopted on the initiative of the head of a surveillance agency or an official authorised by him or her, or on the orders of the head of a surveillance agency.

(27.06.96 entered into force 26.07.96 - RT I 1996, 49, 955; 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 10¹. Decision to commence surveillance proceeding

(1) A decision to commence a surveillance proceeding shall contain:

1) the title and name of the person making the decision, the date on which the decision is made, and the number of the surveillance file;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

2) the reason and basis for commencement of the surveillance proceeding with reference to the Surveillance Act;

3) the grounds for the need to commence the surveillance proceeding;

4) (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

5) (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

6) (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) The corresponding initiator shall be notified of a decision to commence a surveillance proceeding in writing within three working days after the decision is made.

(27.06.96 entered into force 26.07.96 - RT I 1996, 49, 955)

(4) Upon commencement of a surveillance proceeding for the reasons specified in clauses 9 (1) 1)-3) of this Act, a written notice which sets out the number of the surveillance file and the date on which it was opened shall be sent to a Prosecutor's Office.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 10². Decision to refuse to commence surveillance proceeding

(1) After reviewing an application, order or inquiry specified in subsection 10 (1) of this Act, an official authorised to make a decision to commence a surveillance proceeding shall make a decision to refuse to commence a surveillance proceeding if he or she finds that:

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

1) no reasons exist for the commencement of a surveillance proceeding;

2) the surveillance being applied for is not within the competence of the given surveillance agency;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

3) information being applied for may be obtained in a manner which less violates the constitutional rights of persons;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

4) it is clearly inexpedient or impossible to conduct the surveillance activities being applied for;

5) other hindrances arising from an Act or legislation issued on the basis thereof exist.

(2) A decision to refuse to commence a surveillance proceeding shall contain:

1) the title and name of the person making the decision, the date on which the decision is made, and the number of the decision;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

2) the grounds for refusal to commence a surveillance proceeding with reference to the corresponding provision of subsection 10² (1) of the Surveillance Act;

3) the signature of the person making the decision.

(3) The corresponding initiator shall be notified of a decision to refuse to commence a surveillance proceeding and of the grounds for refusal, together with a reference to the provision which is the basis therefor, in writing within three working days after the decision is made.

(27.06.96 entered into force 26.07.96 - RT I 1996, 49, 955)

§ 10³. (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 10⁴. Procedure for keeping surveillance file

(1) Information collected in the course of a surveillance proceeding shall be stored in a surveillance file.

(2) The procedure for keeping a surveillance file and submission of information collected by surveillance activities for examination shall be established by a regulation of the Minister of the Internal Affairs.

(3) A surveillance file shall be closed by a decision to terminate a surveillance proceeding on the basis provided for in § 11 of this Act.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 11. Termination of surveillance proceeding

(1) A surveillance proceeding shall be terminated by a written reasoned decision made by the head of a surveillance agency or a person authorised by him or her.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) The head of a surveillance agency or a person authorised by him or her shall terminate a surveillance proceeding:

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

1) if the other surveillance agency which or official who applied for the commencement of the surveillance proceeding withdraws the application;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

2) if the criminal offence which was the reason for the commencement of the surveillance proceeding is detected, if a person accused of a criminal offence is convicted or acquitted, if a criminal matter is terminated, if the limitation period for criminal prosecution or conviction expires, if a convicted person who is a fugitive is apprehended or if the whereabouts of a missing person are determined;

3) if initial information which was the reason for the commencement of the surveillance proceeding is not confirmed;

4) if information collected in the course of a surveillance proceeding commenced for the reasons specified in clause 9 (1) 5) or subsection 9 (2) of this Act is transferred to the applicant;

(27.06.96 entered into force 26.07.96 - RT I 1996, 49, 955; 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

5) if a court decision which prohibits or cancels a surveillance proceeding enters into force;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

6) if security checks are terminated;

(22.10.97 entered into force 01.01.98 - RT I 1997, 81, 1361)

7) after termination of the monitoring of persons specified in clause 9 (1) 7) of this Act;

(14.05.98 entered into force 15.06.98 - RT I 1998, 50, 753)

8) after an opinion specified in clause 9 (1) 6¹) of this Act is forwarded to the Supreme Court, the President of the Republic, the Supervisory Board of Eesti Pank, the Chairman of the Supervisory Board of Eesti Pank or the Minister of Defence respectively;

(06.06.2001 entered into force 12.07.2001 - RT I 2001, 58, 353)

9) after performance of the obligations specified in clause 9 (1) 8) of this Act.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) The head of a surveillance agency or an official authorised by him or her shall terminate a surveillance proceeding on the order of the Prosecutor's Office which exercises supervision over surveillance.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) Upon termination of a surveillance proceeding commenced for the reasons specified in clauses 9 (1) 1)-3) of this Act, a written notice which sets out the number of the surveillance file and the date on which it was closed shall be sent to a Prosecutor's Office.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 12. Surveillance activities

(1) Surveillance agencies have the right to conduct the following surveillance activities:

- 1) covert collection of information by persons who are engaged in surveillance activities or recruited therefor pursuant to the procedure provided for in § 14 of this Act;
- 2) covert collection of comparative samples, and the covert examination and initial examination of documents and objects;
- 3) covert surveillance and covert examination and replacement of objects;
- 4) covert identification;

5) collection of information concerning the fact of messages being communicated via telecommunications networks, duration, manner and form of communication thereof and personal data and location of senders and receivers of such messages.

(2) In addition to the provisions of subsection (1) of this section, the Police Board and the Security Police Board have the right to conduct surveillance activities which require court permission and are provided for in Division 8 of Chapter 3 of the Code of Criminal Procedure in pre-trial proceedings concerning criminal offences.

(3) In addition to the provisions of subsection (1) of this section, the Prisons Department of the Ministry of Justice has the right to conduct the following surveillance activities in penal institutions in order to prevent or combat criminal offences:

- 1) covert examination of the postal items of a person held in a place of preliminary confinement or in imprisonment;
- 2) covert wire tapping, observing or recording of messages and other information of a person held in a place of preliminary confinement or in imprisonment which are communicated via telecommunications networks.

(4) The acts specified in clause (1) 5) and (3) 1) shall be performed in accordance with the corresponding provisions of the Telecommunications Act (RT I 2000, 18, 116; 78, 495; 2001, 23, 125; 53, 310; 2002, 47, 297; 61, 375; 63, 387; 99, 580; 2003, 23, 136; 88, 594; 2004, 30, 207 and 208).

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 12¹. (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 13. (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 13¹. Permission of court to conduct surveillance activities in penal institution

(1) The head of the Prisons Department of the Ministry of Justice or the person performing his or her duties shall submit a reasoned application in writing to the administrative court of the location of the penal institution for the grant of permission to conduct surveillance activities specified in subsection 12 (3) of this Act or for permission to continue a commenced surveillance proceeding.

(2) In cases of urgency, the head of the Prisons Department of the Ministry of Justice or the official authorised by his or her directive may issue a written order for the conduct of surveillance activities listed in subsection 12 (3) of this Act without the permission of a judge. The head of the Prisons Department of the Ministry of Justice or the official authorised by his or her directive shall send a written notice concerning the issue of an order to a Prosecutor's Office and shall notify an administrative court thereof not later than on the next working day, and shall apply to the administrative court for the declaration of the surveillance activity to be justified and, if necessary, for permission to continue the surveillance activity.

(3) A judge shall promptly review a submitted application and grant permission or refuse for a justified reason to grant permission. The permission of the judge or refusal of the judge to grant permission shall be prepared as a ruling.

(4) If a judge does not declare a surveillance activity to be justified or does not grant permission to continue an exceptional surveillance activity, the head of the Prisons Department of the Ministry of Justice or the official authorised by his or her directive is required promptly to issue an order to terminate the surveillance activity.

(5) An administrative court may grant permission specified in this section for the conduct of surveillance activities for up to one year and extend it each time for up to a year.

(6) Permission shall expire prematurely if a surveillance proceeding is terminated under the conditions and pursuant to the procedure provided for in § 11 of this Act, if a judge revokes the permission for a justified reason, or if the head of the Prisons Department of the Ministry of Justice or the official authorised by his or her directive decides to terminate a surveillance activity.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 14. Recruitment for secret co-operation in surveillance activities

(1) Surveillance agencies have the right to recruit adults for voluntary temporary or permanent secret co-operation in surveillance activities with their consent.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) Secret co-operation and persons who have been recruited therefor are classified as secret. Surveillance agencies, other state agencies, state officials, local government agencies or local government officials may disclose information concerning a person who has been engaged in co-operation only with the written permission of the person who has been engaged in co-operation after the term of classification expires or is altered.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) Persons who have been recruited for secret co-operation are required to refrain from knowingly disseminating false or defamatory information and to maintain the confidentiality of information which becomes known to them in the course of co-operation, and the equipment, methods and tactics used in surveillance.

(4) A person who has been recruited for secret co-operation has the right to refuse to perform surveillance duties with regard to persons close to him or her.

(5) A person who has been recruited for secret co-operation has the right to terminate secret co-operation if he or she adheres to the confidentiality requirements specified in subsections (2) and (3) of this section.

(6) Members of the Riigikogu², members of rural municipality councils, members of city councils, judges, prosecutors, advocates, ministers of religion and officials elected or appointed by the Riigikogu may, with the written permission of the chairman of Tallinn Administrative Court or an administrative court judge of Tallinn Administrative Court designated by him or her, be recruited for secret co-operation for the conduct of individual surveillance activities for a criminal proceeding only if they are parties to a proceeding or witnesses in the criminal matter concerned.

(02.12.97 entered into force 03.01.98 - RT I 1997, 93, 1557)

§ 15. Social and legal protection of persons who have been recruited for surveillance activities

(1) Secret co-operation with a surveillance agency under an employment contract shall be included in the length of employment of a person under the general conditions.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) If a person who has been recruited for surveillance activities for secret co-operation under an employment contract becomes disabled or dies, a single benefit shall be paid to him or her or to his or her relatives at the same rate as is prescribed by the Police Act for a police officer in the event of his or her becoming disabled or his or her death while performing functions, if a higher benefit rate has not been established. A surveillance agency shall pay the benefit.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) A disability or survivor's pension shall be granted under the general conditions if a person who has been recruited for secret co-operation under an employment contract becomes disabled or dies, and 25 per cent of the minimum wage shall be added to the pension unless a higher pension has been established.

(4) Surveillance agencies are required to take measures to prevent danger to the life, health, honour, dignity and property of persons who have been recruited for secret co-operation and of their family members.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 16. Use of information collected through surveillance

(1) (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) The use of surveillance information as evidence in a criminal matter shall not bring about disclosure of the secret surveillance information or persons who have been engaged in surveillance activities or recruited therefor without their consent.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(5) (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(6) (Repealed - 27.06.96 entered into force 26.07.96 - RT I 1996, 49, 955)

(7) (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(8) (Repealed - 27.06.96 entered into force 26.07.96 - RT I 1996, 49, 955)

§ 16¹. Storage of surveillance information

(1) Closed surveillance files, except surveillance files closed pursuant to clause 11 (2) 3), shall be stored in the structural units of surveillance agencies and the structural units shall ensure storage thereof and access thereto pursuant to the procedure provided by law.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) In order to store surveillance information, surveillance files shall be maintained for the following retention periods:

1) surveillance files on criminal offences - until the expiry of the limitation period of the criminal offence;

2) personal surveillance files - until the redundancy of information contained therein, but for not longer than fifty years;

3) files on searching for missing persons - until twenty-five years after the entry into force of a court ruling concerning the declaration of death of the person;

4) other files on searching - until three years after the closure of the file.

(3) Surveillance information may be stored for study and research purposes. Personal data and, if necessary, also the information collected shall be completely altered in order to prevent disclosure of persons who have been engaged in surveillance activities or recruited therefor.

(4) Surveillance files classified as state secrets shall be stored pursuant to the retention period for the storage of information classified as a state secret.

(27.06.96 entered into force 26.07.96 - RT I 1996, 49, 955)

§ 16². Destruction of surveillance files and data recordings collected by surveillance activities

(1) Surveillance files which are closed pursuant to clause 11 (2) 3) of this Act shall be destroyed after the closure thereof. Other surveillance files shall be destroyed after the expiry of the retention period.

(2) If preservation of a data recording made in the course of surveillance activities is not necessary, the person subject to the surveillance activities or any other person whose private or family life was violated by such activities may request destruction of the recording after the termination of the surveillance proceeding.

(3) Surveillance files subject to destruction and data recordings collected by surveillance activities shall be destroyed by a committee which is formed by the head of a surveillance agency. The committee shall prepare a report concerning the destruction of a surveillance file and data recording collected by surveillance activities which shall set out the number of the surveillance file or information concerning the destroyed data recording and the reason for the destruction thereof.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 17. Submission of information collected by surveillance activities for examination

(1) A body which has conducted surveillance activities shall immediately give notification of the surveillance activities specified in subsections 12 (1) and (3) of this Act to the person with regard to whom the activities were conducted and the persons whose private or family life was violated by the activities. On the basis of a reasoned written decision made by the head of the surveillance agency or a person authorised by him or her, conduct of the surveillance activities need not be given notification of until the corresponding bases cease to exist, if this may:

- 1) damage the rights and freedoms of another person which are guaranteed by law;
- 2) endanger the right of a person who has been recruited for surveillance activities to maintain the confidentiality of co-operation;
- 3) endanger the life, health, honour, dignity and property of an employee of a surveillance agency, a person who has been recruited for surveillance activities or another person who has been engaged in surveillance activities and of persons connected with them;
- 4) prejudice surveillance or a criminal proceeding or induce crime.

(2) At the request of a person specified in subsection (1) of this section, he or she is permitted to examine the materials of the surveillance activities conducted with regard to him or her, and the photographs, films, audio and video recordings and other data recordings obtained as a result of the surveillance. On the basis of a reasoned written decision made by the head of the surveillance agency or a person authorised by him or her, the following information need not be submitted for examination until the corresponding bases cease to exist:

- 1) information concerning the private life of other persons;
- 2) information which damages the rights and freedoms of another person which are guaranteed by law;
- 3) information which contains state secrets, secrets of another person or professional secrets of a surveillance agency;
- 4) information the submission of which may endanger the right of a person who has been recruited for surveillance activities to maintain the confidentiality of co-operation;
- 5) information the submission of which may endanger the life, health, honour, dignity and property of an employee of a surveillance agency, a person who has been recruited for surveillance activities or another person who has been engaged in surveillance activities and of persons connected with them;
- 6) information the submission of which may prejudice a criminal proceeding and induce crime;
- 7) information which cannot be separated or disclosed without information specified in clauses 1)-6) of this subsection becoming evident.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 17¹. (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 17². Procedure for access to surveillance information

- (1) Information specified in subsection 17 (2) of this Act shall be disclosed for access only in the offices of the surveillance agency and, if possible, in a systemised manner and chronologically.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) A report shall be prepared concerning access to information and the report shall set out the type, number and date of preparation of each document disclosed for access (if there is a type, number and date of preparation) and the number of pages.

(3) The person who accessed information and the official(s) who disclosed such information for access shall sign the report. If the person who accessed information refuses to sign the report, the official shall make a notation to that effect in the report and confirm it by his or her signature.

(4) The head of the corresponding surveillance agency shall approve the standard format for reports on access to information.

(27.06.96 entered into force 26.07.96 - RT I 1996, 49, 955; 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 17³. (Repealed - 26.01.99 entered into force 28.02.99 - RT I 1999, 16, 271)

§ 18. Challenge and complaint against activities of surveillance agency

(1) Everyone may file a challenge with the head of a surveillance agency or the superior agency of the surveillance agency or submit a complaint to a Prosecutor's Office against the activities of the surveillance agency upon conduct of surveillance activities.

(2) Everyone has the right of recourse to a court pursuant to the procedure prescribed by law if his or her rights and freedoms have been violated by a surveillance activity.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 19. Monitoring and supervision over legality of surveillance

(1) Superior bodies of surveillance agencies shall monitor the legality and justification of surveillance exercised by the agencies administered by them.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) A Prosecutor's Office shall exercise supervision over surveillance proceedings commenced by a surveillance agency which is an investigative body for the reasons specified in clauses 9 (1) 1)-3) of this Act.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) The Riigikogu committee specified in § 36 of the Security Authorities Act shall hear the reports of the National Security Police Commissioner, the National Police Commissioner and the head of the Prisons Department of the Ministry of Justice on the conduct of surveillance activities which require court permission and are specified in subsections 12 (2) and (3) at least once every three months.

(11.06.98 entered into force 16.07.98 - RT I 1998, 61, 981; 15.12.1999 entered into force 01.01.2000 - RT I 1999, 95, 845; 20.12.2000 entered into force 01.03.2001 - RT I 2001, 7, 17; 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4¹) The Commander of the Defence Forces, the Director General of the Border Guard Administration, the Director General of the Tax and Customs Board and directors of prisons shall submit a written report on surveillance activities which do not require court permission, are provided for in subsections 12 (1) and (2) and conducted by them through the appropriate minister to the Riigikogu committee specified in subsection (4) of this section at least once every three months.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591; 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(5) The Auditor General or an official of the State Audit Office designated by him or her, and an official designated by the Minister of Finance shall monitor the legality of the use of financial resources allocated for surveillance.

(6) Information concerning persons who are or were recruited for surveillance activities on the basis of secrecy shall not be disclosed to an agency or official who monitors or exercises supervision.

§ 20. Financing of surveillance

(1) Surveillance shall be financed from the state budget.

(2) Remuneration for secret co-operation and for information forwarded which is paid to a person who has been recruited for secret co-operation by a surveillance agency shall be subject to taxation with income tax and the income tax shall be paid by the surveillance agency.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 21. Liability for Violation of This Act

(1) An employee of a surveillance agency or a person who has been recruited for surveillance activities who violates the established procedure or exceeds his or her authority shall bear liability pursuant to the procedure established by an Act or other legislation.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) An employee of a surveillance agency or a person who has been recruited for surveillance activities shall bear liability for the disclosure or dissemination of secret information or information which it is prohibited to disclose, pursuant to the procedure established by an Act or other legislation.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) Other state officials or local government officials who disclose classified information concerning a person who has been engaged in or recruited for surveillance activities shall bear liability pursuant to the procedure prescribed by law if the surveillance agency or person who has been engaged in or recruited for surveillance activities has not granted written permission therefore or if the term of classification has not expired.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

[§§ 22-26 omitted]³

§ 27. Entry into force of Act

This Act enters into force on the date following the date of its publication in the *Riigi Teataja*.

§ 28. (Repealed - 15.12.1999 entered into force 01.01.2000 - RT I 1999, 95, 845)

¹ RT = *Riigi Teataja* = *State Gazette*

² Riigikogu = the parliament of Estonia

³ Omitted sections amend other legislation.