

## SUMMARY

As a result of the findings of the parliamentary enquiry committee 'Investigating methods' (Parlementaire enquêtecommissie opsporingsmethoden) the rules on the processing of personal data in police files, especially those of the criminal information service (Criminele Inlichtingendienst), needed amending and re-enforcing. These amendments and re-enforcements have been laid down in the Special Police Files Act (Wet bijzondere politieregisters) which entered into force February the 1st, 2000. The 'Wet bijzondere politieregisters' holds, amongst others, rules on provisional police files (voorlopige registers), police files on serious crime (register zware criminaliteit), temporary police files (tijdelijke registers) and on the registration of information concerning of unsuspected persons (onverdachte personen).

In paragraph 30a of the Police Files Act an obligation to evaluate the act has been established. Based on this article the Secretary of Justice and the Secretary of Home Affairs (de Ministers van Justitie en Binnenlandse Zaken en Koninkrijksrelaties) are obliged to inform the Parliament on the consequences and the effectiveness of that act within four years after it's entering into force. The report holds the findings of the first evaluation as established by article 30a of the act. The evaluation was carried out in two separate parts. The evaluation was supervised by the Scientific Research and Documentation Centre (Wetenschappelijk Onderzoek- en Documentatiecentrum) of the Ministry of Justice (WODC).

### **Backgrounds and goals of the Special Police Files Act (Wet bijzondere politieregisters)**

Researchers of Erasmus University Rotterdam have looked into the backgrounds and goals of the (part I).

The Parlementaire enquêtecommissie opsporingsmethoden concluded that too much information was registered by the criminal information service. It remained unclear what information was registered in which registrations and for whom and in what way personal data were made available. Because of this lack of clarity it was impossible to account for the obtaining and use of certain personal data and information. This affected the legitimacy of the prosecution. The Wet bijzondere politieregisters is an immediate and deemed necessary reaction to the fairly serious findings of the parliamentary enquiry committee. The bill tried to re-enforce, strengthen and complement the normative framework already laid out in the Police Files Act (Wet politieregisters), but which was not complied with, by bringing a few special police files under the framework of the Wet politieregisters and by laying out clear rules on issuing. The goal of the bill is to avoid the unwanted situations that occurred because of the lack of clarity about the rules concerning the registration of personal data as well as the lack of supervision on the compliance with these rules in the future. The bill therefore was written to correct the unwanted situation and did not, so much, bear the practical problems concerning the registration, administration and distribution of personal data in police files in mind.

The Wet bijzondere politieregisters tried to correct the unwanted situation by:

- decreasing the number of persons whose data are registered;
- making clearer rules concerning the removal of data;
- enforcing the supervision on the policefiles;
- setting rules concerning the exchanging of personal data between different police services;
- setting rules concerning the exchanging of personal data between police services and special investigating services (e.g. revenue service, [economic crime service]);
- setting rules concerning the usage of ('unconfirmed') intelligence.

Despite these measures it was of course of great importance that adequate investigation remained possible.

In this part of the reasearchproject it is concluded that in the Special Police Files Act the bigger part of the conclusions of the parliamentary enquiry committee concerning the registration of personal data, is laid down. Although in some aspects the recommendations were not implemented entirely, the goals of the bill are in line with the recommendations. The findings of the parliamentary enquiry committee 'Opsporingsmethoden' seem to have been adopted in the Special Police Files Act in an adequate way and goals of the bill seem to be in accordance with the final version of the Police Files Act. After all, on one hand clearer rules have been set for the use of personal data in police files, while on the other hand the interests of an efficient investigation have been taken into account. In this sense the goals of the bill seem to have been laid down in an adequate juridical way in the Police Files Act.

### **The Special Police Files Act in Practice**

In collaboration with Mazars Information Systems Auditors (Mazars), Net2Legal Consultants carried out part II of an evaluation study on how the Special Police Files Act works in practice. This part of the study deals with the manner in which the Special Police Files Act is implemented. The following problems were identified in this part of the evaluation study: what are in actual fact, the consequences of the Special Police Registers Act, which difficulties come to light and, what is the effectiveness of this Act in view of the different types of special police registers differentiated in the regulations? This study covers the subjects listed below and these are described in some detail in part II:

- the implementation of the Special Police Files Act;
- informants and informants' registers;
- provision of information from the Special Police Files;
- retention period;
- supervision;
- notification; and
- the number of criminal intelligence services (CIE) subjects.

To find answers to the above-mentioned subjects, information and working practice on the Special Files Registers Act were gathered in three different phases. Each of these phases used different sources. The first phase was based on a self-evaluation and review of the criminal intelligence services (CIEs) of the regional

police forces, the former core teams of the national department of criminal investigation and the Royal Dutch Military Police. This was carried out in the period from March 2002 until March 2003. The second phase entailed a series of interviews with four regional police forces and one core team. Interviews were also held with representatives of the Data Protection Commission. The third phase was carried out with the assistance of the Dutch Police Academy Privacy Helpdesk and by using information gathered by the regional privacy officers and from the Dutch National Criminal Investigation Units of the National Police Services Agency on a number of CIE subjects. In addition to information gathered in these three phases, separate information came from officials who are (also) responsible for the supervision of the Special Police Registers Act for data protection as referred to in Article 62 of the Personal Data Protection Act.

### ***Observations regarding the Special Police Files Act in practice***

The overall picture emerging from this study appears to be that the police forces and, particularly the criminal investigation units, have gone to great lengths and were often under considerable duress to try to implement the Special Police Files Act.

As regards the specific objectives of the Special Police Files Act, the researchers reached the following conclusions.

#### *Decrease the number of individuals in the CIEs and in the provisional and serious criminal registers*

The number of CIE subjects has gone from at least 54,000 individuals during the parliamentary enquiry committee to 33,000 by the second half of 2001. This number began to increase again in the later part of 2001. The number of individuals registered in the provisional registers decreased from 10,000 to a little more than 3,000 in 2002. It appears from the obtained information that the CIEs and the old criminal intelligence services (CID) registers have been cleared. It also shows that records were also cleared in 2002 and 2003. In practice, it appears that clearing records within the determined retention period does not present any particular problems. However, using the 'necessity' criterion to carry out the so-called intermediate clearing does appear to be more complex and difficult to implement.

#### *Tightening the supervision of registers kept by the Dutch Criminal Investigation Units on serious criminals, provisional information and on informants*

This study clearly reveals partly through the self-evaluation studies carried out that there is an increase in those activities that, in short, are focused on the careful management and use of (personal) data. It is quite clear that extra measures have been taken not only in data management but also in the control and supervision of the collection of information by informer liaisons, in the registration of data in provisional and serious criminal registers, in the provision of data from registers and in the clearing of registers. Not only does the CIE head or interim head play an important role here, but also the commitment and efforts of the CIE prosecution officers has noticeably increased during the past years.

#### *Imposing stricter rules and criteria for the registration of a CIE individual's data.*

the Special Police Files Act particularly restricts defining CIE individuals and contacts by specifying the crimes which would allow their data to be registered. On the other hand, registration according to a criminal offence does not prove to be a problem. In practice, there is a problem concerning the necessity criteria policy, which means that data may only be registered if and providing it is necessary for the good execution of the given purpose of the registers. The criterion for 'intermediate' clearing of data appears, in practice, to be complex and difficult to apply.

### **Unsuspected persons**

There is a regulation in Article 5a of the Special Police Files Act concerning the registration of unsuspected persons' data which stipulates that this may be kept for a maximum period of four months providing it is not recorded in the special police registers. As regards these regulations concerning unsuspected persons, the researchers believe that, in practice, these are extremely difficult to carry out or cannot be carried out well. Despite all the efforts made, it has proved impossible to find a unique, practical and day-by-day method whereby simple criteria could be used to register unsuspected persons and their personal data separately.

### **Recommendations**

Based on the observations and findings of this study into the workings of the Special Police Files Act in practice, the researchers would like to present the following recommendations:

- to simplify, as far as possible, the present regulation framework in particular regarding the distinctions made between the many types of registers and the extensive and detailed provisions regime;
- to investigate whether it is possible to reduce the present emphasis on the (first) retention of data and to change this with, for example, a regulatory framework that focuses on the moment when the registered data are actually used. This could entail less detailed rules and differences regarding the first registration of data and a possibly provide a more explicit checklist for the use and provision of data;
- to allow, where possible, the regulatory framework and existing tasks, duties (work processes), inter-relationships and developments at policy-related level, such as information driven investigation (IGO) and information driven police activities (IGP) to collaborate together;
- to promote a more uniform organization and information housekeeping in the police forces;
- to consider in which way training, information services, advice and the formulation of instructions and processes can be done jointly (integrated) and streamlined;
- to delete the provisional registers from the Special Police Files Act ;
- to discontinue the regulation under Article 5a of the Special Police Files Act concerning unsuspected persons;
- to increase the list of punishable offences under Article 2a of the Police Files Decree by including with regard to hemp nurseries, related offences such as burglary, the possession of firearms and the handling of stolen goods;
- to highly simplify the police forces' administrative tasks such as, the reporting of provisional registers, to allow them from a administrative point of view, to

take measures or to continue their task through a central point within the organization so that an overview can be made as to which personal data files are being dealt with or are being processed;

- to provide more prominently for the special position of informant registers:
- to make it possible for the exchange of data between investigation teams and data in the provisional registers by, for example, determining that, in principle, data may also be provided if it is necessary for the good execution of the recipient investigation team's tasks.
- to concentrate supervision not only on the CIEs and the police registers they maintain, but in a much broader sense, give attention to the management control and supervision aspects of processing of data in police registers;
- to give attention to the automation of registers and the development of new systems but to also concentrate on the formulation of regulations for the management and steering possibilities which automation can provide;
- to provide the possibility of filing registers or at least for registers that can be filed;
- to continue and, where possible, strengthen the position of privacy officers and,
- to make it clear, within the regulatory framework, what the possibilities are concerning confidential knowledge of data by the Court in procedures regarding the unjustified or justified refusal of examination.