

TAB D



AN ÁRD CHÚIRT
(The High Court)
BAILE ÁTHA CLIATH 7
(Dublin 7)

December 14, 2007.



Mr. Justice T.C. Smyth

An Taoiseach
Office of An Taoiseach
Government Buildings
Dublin 2

**Re: Interception of Postal Packets and Telecommunications Messages
(Regulation) Act, 1993 and the Criminal Justice (Terrorist Offences) Act, 2005**

Dear Taoiseach,

Herewith my report as "the designated judge" under the above Acts. I have confined myself in the report to a review of compliance with the legislation. However, there are some observations I hope may be of some assistance to you and the Minister for Justice in particular.

1. There is an informal exchange of information in relevant cases between the Army and the Gardaí. I believe some thought should be given to give formal legal authority and sanction to this. In the event of a prosecution for a crime it is possible that if the Garda were to seek to use evidence originating in the Army records, objection might be taken by the defence as evidence which (without legal authority) the prosecution ought not to be permitted to be given in court.

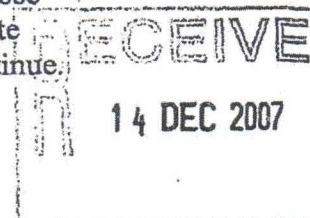
2. There is a real present and urgent problem about pre-paid mobile phones.

In a significant number of "cases" (i.e. inquiries/investigations) "Nil" results came back from all four of the main service providers. Very serious crimes were hindered in their investigations because the suspects or persons who might properly be investigated used pre-paid mobile phones and were, because of what I believe to be inadequacies in the law, impossible to trace. The use of unregulated, pre-paid mobile phones facilitates the avoidance of detection because there are no traceable records or instruments.

The duty of the State to protect its citizens, (either through the Army whose duty to protect the security of the State or the Garda, whose duty is to investigate crime) can hardly be said to be fulfilled if it permits the present situation to continue.

It is not for me to say how the problem is to be tackled – I make two suggestions, and they are no more than such.

- (a) Those who sell pre-paid mobile phones should be given an annual licence which would oblige the licensee to keep a register which must be up to date – and such register to be handed in to the licensor, with an averment that the register is both complete and accurate and up to date. Failure to



deliver such annual register to disentitle the licensee to a renewal of the licence.


- (b) The applicant for a pre-paid mobile phone to fill out a form (which forms would be part of the licensee's register) giving name, address, date of birth, occupation, nationality and, very particularly, the serial number of the instrument.

An appreciable number of the inquiries I reviewed 'ran to ground' because there was no I.M.E.I. number, no SIM card details, no phone number and no personal details.

Even if my suggestions are ignored, the problem should not be ignored. This is not a matter of civil liberties, it is simply the application of a very simple idea: those who would avail of the protection of the law should be amenable to the law.

3. At present there is no time limit within which a service provider is obliged to respond to a request or inquiry for information. Might such be made a term or condition in respect of new "licences or renewal of licences" to operate?

Yours sincerely,


T.C. Smyth