

PM with Mark Colvin

Monday to Friday from 6:10pm on ABC Local Radio and 5:00pm on Radio National.

Discovery of more than one whistleblower in East Timor bugging case

Peter Lloyd reported this story on Thursday, December 5, 2013 18:10:00

MARK COLVIN: In the latest twist in the case involving Australian spies bugging the offices of the East Timor government, PM has learned that Timor's lawyers in the Hague had intended to call four whistleblowers to back their case.

Earlier in the week, the domestic spy agency ASIO (Australian Security and Intelligence Organisation) raided the home of a senior ex-member of the overseas spy service ASIS (Australian Secret Intelligence Service).

He's believed to have been a senior member of the team that carried out the bugging operation in the Timor capital Dili.

We now understand that other members connected to the operation had also decided to testify.

There are also serious questions about how the Australian Government's legal team used privileged information given to them by the Timor legal team.

Peter Lloyd has been investigating and joins me now.

Let's begin about two weeks ago when the legal teams of Australia and Timor met in the Hague.

PETER LLOYD: That's right Mark, a timeline is taking shape here, which reveals the background that led to these ASIO raids in Canberra this week.

It was two weeks ago in the Hague that a preliminary meeting between the parties in this dispute over the treaty took place and at that meeting the exchange of information included the revelation to the Australian side by the Timorese that there are not one but four whistleblowers in this case.

We presume other operatives from ASIO - ASIS rather - that were involved in this elaborate bugging operation during the year 2004, where on four occasions they broke into the cabinet offices at the palace of government in Dili and installed surveillance equipment; maintained and carried out operations to find out what was said in that room, and then passed it on, say the Timorese, to the Australian government and their negotiators, who were doing a deal over this \$20 billion Sunrise, Greater Sunrise, gas field.

MARK COLVIN: They told the Australian Government who they were going to bring as witnesses?

PETER LLOYD: Yes, as an act of, what the Timorese called, good faith in the negotiations of the architecture of this tribunal. What we've got, what you've got - the exchange of normal information in a legal case. That is when the hammer dropped on Australia.

So the timeline suggests that within two weeks of finding this out that's what led to the raids.

And it's raised for the Timorese the question of whether or not the veracity of George Brandis' - the Attorney-General's - statement two days ago can be fully tested. Because he's saying that ASIO came to him and said there was a matter of national security.

They're saying, that's rubbish, that he acted on the basis of information obtained in the normal arbitration process, and they believe that these raids shouldn't have took place, and they're seeking some legal counsel advice tonight to find out whether they can try and overturn these raids and the seizure of these documents under the warrants and have them returned to their owners.

MARK COLVIN: Where might they be able to do that? In a Federal Court?

PETER LLOYD: Big grey area of law here. Look, under the Commonwealth act that ASIO and ASIS exist under, the remedies would probably be taking them to the Federal Court. It's not clear and the Timorese themselves aren't sure what the route is, how they take this journey. But that's the strategy.

MARK COLVIN: Now one of the witnesses for Timor, we know, has had his passport cancelled and is therefore grounded here in Australia, and will not be able to go to the Hague to give evidence. Is there some possibility of doing it on video link? Do we know that?

PETER LLOYD: There are a number of options, Bernard Collaery, the Australian legal advisor to the case, has suggested to me that if they had to they'd bring the tribunal, the three party tribunal hearing here to Australia. They could do it via video, they could do it via phone.

I don't think silencing him is in any sense achieved through this process.

MARK COLVIN: And what about the others, if there are four?

PETER LLOYD: Well that's - the same test and question applies to them. It's presumed that if there are four, then there are four affidavits and that the affidavits were seized along with the other things that were taken from Collaery's house in Canberra this week.

One of the significant other bits of this timeline that's emerged today is that in a second preliminary meeting, one week ago, the Australian Government, say the Timorese, agreed not to arrest these guys, we presume it's men, before the case was heard when they were abroad. But they specifically did not make the agreement to not arrest them in Australia.

MARK COLVIN: One of them is under arrest, or has been arrested, and, as we say, the passport cancelled.

PETER LLOYD: That's right.

MARK COLVIN: What about the others? Do we know where they are?

PETER LLOYD: We don't. We don't know anything about - this is the first time today that we've learnt that there are others.

MARK COLVIN: So for all we know they could possibly be in the Hague or on their way to the Hague?

PETER LLOYD: Well it raises the question, if the Timorese side revealed to the Australians two weeks ago that these whistleblowers, that this smoking gun evidence existed, why they didn't move them faster and sooner out of the jurisdiction if the deal they've struck is to not have them prosecuted or prevented from taking action by the Australians overseas but not in Australia. It's

one of the big questions here.

The other thing is that the - today we've discovered more information about the kind of background that preceded this case even becoming public.

A year ago, the then prime minister, Julia Gillard, received a letter, a document included in the letter, from the prime minister of East Timor, saying we have a problem with this treaty and we need to start doing some negotiating about it. They say that there was no response. That there was a subsequent meeting set up in London, at which the Australian side simply didn't turn up.

MARK COLVIN: Didn't turn up?

PETER LLOYD: Didn't turn up, according to the Timorese. In an act that they saw as a defiant refusal to even engage on what they say was a basic contractual dispute.

And it gets even worse, from the Timorese account, that they also say there was a follow-up meeting in Bangkok later in the year, at which no senior minister attended and they believe only note taking, effectively, level people from DFAT (Department of Foreign Affairs and Trade) turned up to hear, and to engage with the Timorese side, and then left the room with no instructions on what to say.

So...

MARK COLVIN: All of this was happening while Australia was trying to get a seat on the UN Security Council is that...

PETER LLOYD: With the support of the Timorese. Yes. That's an interesting bit of geopolitics that was going on at the same time.

MARK COLVIN: Are the Timorese saying that?

PETER LLOYD: That's what the Timorese are saying, is they feel a bit miffed about how big brother Australia's been treating them. And this is important because they are saying, this is the essence of their case, that under the treaty that they're disputing, there is a part of it that says that if there is a dispute then the two parties should sit down and try and resolve it through fair means.

And they're saying they did all this, and they're revealing this information to illustrate their case, which they say will begin this evening in the Hague.

MARK COLVIN: Peter Lloyd, thank you very much.

©2010 ABC



© 2013 ABC