



SPECIAL METHODS AND TECHNIQUES FOR INVESTIGATING DRUG TRAFFICKING

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Abstract:

This paper focuses on some of the methods and techniques used by law enforcement authorities to identify suspects, crimes, the manner in which they were committed and the evidence necessary for proving the criminal activity. The study mentions the sensitive character of these means and methods by considering that they may often violate fundamental human rights and freedoms.

Keywords: *drug trafficking, controlled deliveries, wire tapping, undercover investigator.*

Chapter I of the Council of Europe Recommendation (2005) 10 on special investigative techniques of 25 April 2005 defines special investigative techniques as "techniques applied in the context of criminal investigations for the detection and investigation of serious crimes and suspects, designed to collect intelligence so as not to alarm the persons concerned"

Special investigative methods and techniques must be used by the judiciary in accordance with respect for fundamental principles, namely the principle of legality, the principle of respect for human rights, the principle of utility and proportionality of these means.

The principle of legality is a fundamental rule and is expressed by requiring the existence of a legal

framework on the use of these methods or techniques, circumstances and the time in which they can be used, their action limits and authorization procedures.

For effective implementation of these measures in accordance with European standards on human rights, states and governments should develop a comprehensive legal framework and institutional structures with effective control mechanisms and to ensure a well-trained staff for implementation of the measures concerned.

Special investigative techniques are numerous, varied and evolving, are secret and can restrict certain rights and freedoms of individuals.

European Court of Human Rights ruled that the special investigative means

are necessary for drug trafficking investigation by judicial authorities. However, it requires that the interference with private life and the degree of this mixture to be necessary and proportionate. And perhaps what is most important, it requires that the mixture should be accompanied by sufficient procedural guarantees in terms of performance and their authorization to ensure that they are not used in an arbitrary manner, unpredictable and uncontrollable.

Illicit drug trafficking investigation requires extensive use of the most modern technical forensic methods and especially the use of modern means of investigation.

The main special investigative techniques used in combating drug trafficking were laid in article 20 of the UN Convention on Transnational Organized Crime, recommending states implementation of their mechanisms of action and related legislation. These techniques are: audio-video recordings, surveillance of communications and electronic transmissions, the use of protected witnesses and grant immunity to them, controlled deliveries.

Since the concrete ways of preparing or committing traffic offenses and illicit drug use has increasingly diversified forms, before which the possibility of identifying and establishing guilt become more difficult, has become a necessity in

legislation Romanian the appearance of new institutions, enhancing the possibilities of judicial bodies in the discovery, investigation and combating this phenomenon.

The Law no. 143/2000 on preventing and combating illicit drug trafficking provides methods and special investigative techniques such as controlled delivery, undercover investigator, purchase of drugs, essential chemicals and precursors by the investigator and undercover officer, access to telecommunications or computer systems.

Controlled delivery

In recent years there have been increasingly more international concerns in cooperation between the competent authorities in the fight against drugs in different countries, in order to detect and combat illicit activities of drug traffickers.

Article 1, lit.k of the Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed at Vienna on 20 December 1988 shows that the "Controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, or substances substituted for them, to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying

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persons involved in the commission of offences.

The technique of drugs delivery is regarded as an invention of the American judicial system, with evidence that it was used since 1931 after being used and regulated by other states.

Controlled delivery method involves the collaboration of many countries to detect and catch drug traffickers who perform criminal activities in their territory. Deliveries are made to uncover drug trafficking across the network, from grower, manufacturer and distributor to buyers and consumers. Deliveries are authorized in many countries, but not in all states.

There are countries where:

- legislation authorizes expressly the use of controlled deliveries;
- law prohibits expressly the use of controlled deliveries;
- legislation contains no references to such activities, but deliveries technique is used.

If the fundamental principles of their domestic legal systems allow, states will take all the necessary measures, taking into account their ability, to allow the appropriate use of controlled delivery at the international level on the basis of agreements or commitments which they have done in order to identify and catch people involved in drug trafficking

offenses. Therefore, the first condition is that each state, of those participating in deliveries, to obtain necessary approvals from their internal organs, entitled thereto, in order to attend deliveries.

Our country has engaged with the international community in the fight against the scourge of drugs, by creating structures needed to combat drug trafficking and permanent improvement of the legal system. Deliveries are governed by national law in the following laws: Law no. 143/2000 on preventing and combating illicit drug trafficking and consumption, Law no. 39/2003 on preventing and combating organized crime, Law no. 218/2002 on the organization and functioning of the Romanian Police and Law nr.118/1992, which Romania acceded to the Convention on Psychotropic Substances of 1971 and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

Law no. 143/2000 regulates the controlled supply, establishing that the Prosecutor's Office may authorise, at the request of institutions or bodies legally qualified, making of deliveries, with or without total replacement drugs or precursors. According to legal provisions, controlled delivery is the method used by legally qualified institutions or bodies, with the authorization and under the control of the prosecutor, which means

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allowing the passage or movement within the country of drugs or precursors suspected of being illegal, or of substances replacing drugs or precursors, in order to discover of criminal activities and identify people involved in these activities.

The category of legal bodies empowered to participate in making deliveries are the General Inspectorate of Romanian Police, General Inspectorate of Romanian Border Police and Customs Authority.

Deliveries can be of two types:

- With the substitution of drugs which in turn can be total or partial substitution;
- Without the substitution drugs, depending on the particularities of each case.

At the request of authorities or institutions legally empowered, Prosecutor of the Directorate for Investigating Organized Crime and Terrorism can authorize or reject this activity. In order to address a request to perform a controlled delivery, the prosecutor has to consider several criteria for assessment:

- legality, namely respect for the functional competence of each institution involved in this activity, and on applications of the judicial authorities of other countries to respect the substance and form contained in the agreements

governing international cooperation in this matter. Also, he will track the existence of data or clues showing any crimes referred to in article 2 of Law no.143/2000 and the activities to be performed are permitted by law.

- the opportunity, in the sense that using this method it is necessary to prove criminal acts or to identify individuals involved in drug trafficking and is the only effective way of obtaining information and evidence necessary to establish the truth.

Undercover investigator

Among the new methods that are practiced successfully in the fight against illicit drug trafficking for many years by the judiciary in Western countries and more recently, by the competent authorities of our country is undercover infiltration groups of offenders.

The term "undercover investigator" is reproduced from the Anglo-Saxon concept (undercover investigator or agent), generally having the same connotation, namely to infiltrate and work with or among those to be observed in connection with the provision of intelligence, data, evidence or evidence of drug activity, as has been regulated by the Law no.143/2000.

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Experience in the fight against organized crime has proven that the use of undercover agents is an important component of proactive criminal actions of the cases handled nowadays. These methods are particularly useful in criminal cases, where there is little evidence and are not identified people willing to testify.

As shown in the literature, an undercover operation has three essential characteristics: the secret (agent disguises as a police officer or a third party working for the police), cunning (agent constructs a scenario in order to gain the trust of a person in order to establish an offense or gathering information related to a crime) and interaction.

Undercover techniques are used when a person is suspected of participating in criminal activity is found to be without committing any crimes, just to discover that evidence or evidence leading to involvement in establishing the facts investigated.

Intelligence techniques are used when there is no evidence to identify a suspect and the circumstances of an offense. These methods are aimed at gathering information from the criminogenic relations, from identifying common elements between crimes committed in a particular period or area of interest or from the analysis of the specific operation of organized crime groups.

Identification or discovery techniques of the author are used when a crime was committed, but the suspect has not been identified or identification was not carried out accurately.

In the U.S., the work in this area is older and is strictly regulated, undercover cops are part of the Ministry of Justice, of the U.S. Federal Bureau of Investigation, Criminal Investigation Division, Department of Investigations Support Unit.

This brief overview of American doctrine reveals that indeed the use of undercover techniques aims to collect data and evidence on the existence of the crime and identify the perpetrators.

Undercover investigators represents a new category of subjects of judicial officials, who along with the controlled delivery activities are new record-operative instruments introduced into our law by the Code of Criminal Procedure, Law. 143/2000 on preventing and combating illicit drug trafficking and consumption, Law no. 218/2002 on the organization and functioning of the Romanian Police and Law. 39/2003 on preventing and combating organized crime.

Police infiltration in groups of offenders can be achieved in the following situations:

- when information about offenders in the group can not be obtained

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- by other means, as to the intent and the means to commit crimes;
- when authorities can not provide evidence about members of the group so that their actions could be revealed;
- when direct investigation of group of criminals suspects would not lead to any result, unable to obtain evidence in question;
- when using the covered technique in a particular case would certainly reduce the costs and time.

The covered investigation is a special technique used by a particular body regulated by law, which consists of entry under a conspired identity of a police officer in contact with a particular group of individuals involved in the trafficking and consumption of illicit drugs or liaising with such a group, determined, against which there is objective evidence that lead to the assumption that they commit drug offenses, or that they are about to commit them.

Law no. 143/2000 defines covered investigators as special police officers appointed to carry out, with the prosecutor's authorization, specific activities in order to collect data on the existence of the crime and the identification of perpetrators and prior acts under a different identity than the actual, assigned for a limited period” .

Undercover officer was defined in criminal doctrine as a person acting under a different identity than the real one, which investigates thoroughly and systematically in order to discover data on the existence of committing a crime or preparation, and of persons who have committed or are going to commit a crime. From the definition can be drawn cumulative conditions which the person who may be undercover have to meet, namely:

- person designated as an undercover investigator must have the quality of police officer;
- particular person must be designated to perform this task;

To assign undercover police sound measures are needed for recruitment, selection and training, being necessary to take into account the level of training, honesty, motivation, negotiation skills, willingness to work together, resistance to stress.

A good undercover investigator should have many skills such as:

- have knowledge of the underworld, its methods and modus operandi;
- be familiar with their way of speaking;
- be aware of the market prices of illicit drugs;
- have knowledge of drug or merchandise to be bought;

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- have the talent, skills needed in the field;
- not be known in the action zone;
- have the same origin or at least “education” compatible with the traffickers.

In addition to these skills, the undercover agent must have certain qualities, such as intelligence, self-confidence, courage, the ability to weigh facts (to properly assess things) initiative, resourcefulness, good memory, patience, physical condition, passion for the technique. He also must be able to communicate (to be communicative), have acquired sufficient prior experience to be able to fulfill this role, to show common sense.

Wire tapping

Using appropriate features of collecting information about the persons involved in offenses with social risk is practiced in all democratic countries. Accepting the idea that judicial bodies perform a socially useful activity and it is in the interest of society to be effective, most democratic states have created a legal framework governing the right to use these operative technique, including wiretapping or indoor discussions, the law limiting the possibilities of abusing such means.

Tape conversations, and record of images are appreciated in the literature as

means of investigation used by the prosecution in order to detect crime, to identify offenders and establishing of the truth.

Like any other evidence, intercepts and audio and video records are aimed at the discovery of truth, they are meant to prove circumstances which preceded, accompanied or followed the crime committed, participants, the degree of participation, goods which are subject of criminal activity, the means used to implement the resolution of crime, etc..

The inclusion of that evidence, after a period in which restraint was shown to them, especially because they can be relatively easily manipulated, is a modernization of proof in criminal proceedings. The legislature has established certain measures on the one hand, to prevent their rigging, and on the other hand, contribute to subsequent verification of their authenticity.

Interception and recording of audio or video governed by art.91 CPP represents an important category of evidence in criminal proceedings. Like any evidence, audio or video interceptions contribute to the achievement of the purpose of criminal proceedings, providing vital evidence in investigation and prosecution.

Due to the specific mechanism of achieving and mostly informative and operative nature means that this presents a

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According to legal provisions, authorizing wiretaps and audio or video recordings shall be issued by the presiding judge that he would return jurisdiction to hear the case at first instance, in the council chamber, where it was considered that this measure is essential to ascertain the truth and are satisfied and other requirements of law.

If the interception and recording was done in a foreign language, the translation will be made in the Romanian language, the translation being certified by an accredited translator.

Magnetic tape or other medium to record the call, play it and the written report prepared by the prosecuting authority is the court which, after hearing the prosecutor and the parties, has the interest of the data obtained in the research and resolution of the case, concluding A record in this regard. If part of the information and data obtained are results of conversations or communications that contain state secrets, their record will be in separate minutes.

According to art.91 CPP provisions, conditions and procedures for the interception and recordings provided in art.91 CPP, apply accordingly in the case of records in the environment, location or GPS tracking or by other electronic means of supervision.

The introduction of these provisions was necessary to give the efficiency of this means of investigation to the increasingly diversified forms of committing crime and particularly cyber crime which is often associated with organized crime and money laundering.

Also, expanding the scope of the interception and recording of conversations and communications was imposed due to the development of media and communication technologist.

Special laws in combating organized crime expressly provide evidence, access to telecommunications or computer systems, establishing how and permit conditions.

The provisions of article 23 of Law no. 143/2000 on preventing and combating illicit drug trafficking and establishes that "when there is substantial evidence that a person to commit an offense under the Law. 143/2000 or who has committed such an offense uses telecommunications or computer systems, the prosecuting authority may, with the authorization of the prosecutor, to take acces in these systems and to supervise for a specific period. "

The main access equipment that may be subject to electronic surveillance are fixed telephone, public telephone, cell phone, pagers, fax machines, computers,

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and systems for recording and payment (cash registers, ATMs and card readers).

Art.91 provisions shall apply accordingly if capturing images.

Authenticate audio recordings can be made within the technical expertise, which according to international standards must conduct an analysis of:

- physical integrity of magnetic tape;
- waveform and audio spectrogram of audio recorded;
- technical characteristics of the equipment used at registration.

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