Studies and Articles

Conditions Derived from the ECHR Jurisprudence for the Effectuation of Interceptions in European Union Member States

Sandra GRADINARU[1]

Abstract: The present paper aims to analyze ECHR jurisprudence on the provisions regarding technical supervision at European level. The focus of the research is on the conditions of authorization and the legislative demands derived from the European Court of Justice's judgments, which has repeatedly condemned the practices of the judicial authorities in the Member States regarding the performance of the technical supervision, and especially the ways of using the evidence thus obtained. Undoubtedly, technical surveillance is an interference in the exercise of the right to privacy of any European citizen, interference which is conditioned by the existence of a superior interest, namely the public interest in bringing to justice the persons guilty of committing various offenses. However, the ECHR consistent jurisprudence has shown that this public interest must not lead to the misuse of certain procedural measures, ignoring the right to a fair trial. The academic and practical interest of this work lies in the fact that its addressability is as wide as the entire European Union. Thus, the present study can support practitioners of law in any EU Member State, all the more so as national criminal law or criminal law systems tend towards a homogeneous legal provision.

Keywords: technical surveillance; human rights; criminal procedure; wiretap; interception

Manner of Administration of Evidence in the Light of European Court of Human Rights

No provision of the European Convention on Human Rights regulates the regime of evidence, this being a matter for regulating for the national laws. The role of the European Court is not to determine "the admissibility of certain types of evidence, but to examine whether the procedure, including how the evidence was obtained or administered, was fair in its entirety" (Volonciu & Barbu, 2007).

[1] Senior Lecturer, PhD, Alexandru Ioan Cuza University, Romania, Address: 11 Carol I Blvd., 700506, Iasi, Romania, Tel.: +40721100900, Corresponding author: sandra.gradinaru@yahoo.com.

Analyzing the case-law of the Strasbourg court, we noted that the Court tends to consider that the violation of a Convention right - in order to obtain evidences - does not per se imply an infringement of the right to a fair trial.

The analysis of the legality of evidence cannot be the responsibility of the Court, since it is within the margin of appreciation of the Member States. However, when the administration of evidence obtained in violation of a Convention law also infringes Art. 6, the Court may state that the admission of that evidence by the national court rendered the proceeding unfair, thereby infringing Art. 6 of the Convention".

The European Court has held that its role, according to Article 6(1) of the Convention is not to determine whether certain evidence has been obtained illegally but rather to consider whether such an "illegality" has the consequence of violating another right protected by the Convention. Thus, the Court must analyze the quality of the assessments made by national courts with regard to the defendants' defense and ensure that they adequately guarantee the defendant's right of defense, in particular the right to contradictory procedures and equality of arms (Bufinsky v. Romania, 2004).

Therefore, art. 6 par. (1) of the Convention guarantees the right to a fair trial, but it does not lay down any rule as to the admissibility of evidence or the manner in which it should be assessed, issues which are therefore primarily matters of national law and national courts.

Message Transmission

From the schematization of the definition of the communication, it appears that it comprises the source, namely the issuer, who, having a certain idea, pursuing an action from the recipient, that is the receiver, encodes it in a form accessible to his understanding. Coding is usually the letters and words of the language used by the issuer and receiver. The message can be expressed orally, in writing or non-verbal. The channel or media through which the message is transmitted and which links the two subjects when the communication is not direct can be a letter, a computer, telephone, fax, TV, etc. Selecting the right channel is essential for effective communication (Stoian, 2011).

However, in order to correctly decode a message, we need to resort to a cumulus of factors, taking into account several aspects.

Thus, to interpret the meanings of a written message, we only have 7% of the information available. According to a study by Dr. Albert Mahrabian, the meaning of communication is given by words in the proportion of 7%, 38% voice and nonverbal behavior, 55%.

The information resulted from interception of communications must be decoded with maximum responsibility of the judiciary body, because understanding the meaning of a message depends on several factors.

In practice, the evidence obtained from interceptions are contested. In this case, the courts have to analyze very carefully because there is a risk of falsification or the risk of subjective interpretation of the message by the judicial bodies.

We observe that the notion of communicating, as an essential element of human existence, is connected with the principles of freedom of expression and the right to respect the private and family life, domicile and correspondence, rights granted to any individual.

Technical Surveillance in the Evidence System of the Criminal Trial

The freedom of the judiciary in the administration of evidence must respect a certain balance between the need to protect the person's right to privacy and the fundamental principles of the criminal process, conditions in which the right to a fair trial is of paramount importance.

In some cases against France (Kruslin & Huvig), the Court considered that the French system for authorization of wiretapping doesn't give sufficient guarantees against abuses. This because in the law was no definition of the persons that can be intercepted. Also, the law didn't say what are the crimes for which the interception can be authorized.

Also, there were no limits on the length of the measure, if it was ordered by the training judge, there were no provisions on how to draft the minutes of the intercepted conversations and the measures to be taken to ensure that the recordings made either communicated intact and completely to the judge (who could not control the number and length of the original recorded bands) and to the defense, the ways in which the tapes could be destroyed (Bîrsan, 2005).

The right guaranteed by art. 8 of the European Convention on Human Rights may be subject to certain limitations, being part of the category of conditional rights, thus

allowing, under the terms of paragraph 2 of this law, the interference of public authorities with the purpose of intercepting communications in order to obtain means of evidence.

By interception of electronic communications or any other communications we understand to access, monitor, collect or record conversations by telephone, informatic systems or any other mean of communication.

The access to an informatic system is hacking into a computer or storage device, directly or indirectly, with special programmes or by a network, in order to identify evidences.

The **video, audio or photo surveillance** is taking pictures of persons, spying or recording conversations, movements or any other activity. This measure can apply to stakeout and to monitor ambient conversations.

Localization and tracking by technical means the use of devices that determine the place where a person or an object is.

It is necessary to distinguish between GPS surveillance relative to public travel and that performed by other visual or acoustic means, since the first one captures fewer elements related to the conduct, views or feelings of the person being traced, therefore the violations of the person's right to privacy are less intense. The European Court therefore considered that in this case it is not necessary to apply the same strict safeguards which, according to its case law, should be observed in the case of telephone interceptions. For example, it is not necessary to strictly specify the maximum duration of the measure taken or the procedure for using and storing the data (Uzun v. Germany).

Another technical surveillance method is obtaining data on a person's financial transactions. This measure means any operation that provides insight into the content of financial transactions and other transactions that were or are to be performed through a credit institution or other financial entity, as well as obtaining, from a credit institution or from another financial entity, documents or information in its possession relating to the transactions or operations of a person.

Requirements in the Matter of Electronic Surveillance in the Light of the European Court Jurisprudence

Human rights are guaranteed by the European Convention, elaborated by the Council of Europe and signed in Rome at 04th of November 1950.

It is appreciated in the literature (Udroiu & Predescu, 2008) that this regional international document has a two-dimensional, normative and institutional dimension, a legally binding instrument for States Parties, meaning that "it is not content to recognize individual rights, but raises them to a legal rank and, for the first time, internationally, gives them protection".

European Convention and the European Court`s jurisprudence do not require Contracting States to integrate rules in national laws or to apply them in the national legal system.

In other member states of the European Council, we find a dualist system (non-integrator system) according to which, the dispositions from the Convention are applicable only if they are found in special national laws, which recognizes the internal validity of conventional provisions (In this situation are: Finland, Malta, Sweden, Norway, Denmark, Great Britain).

In countries such as Germany, Spain, France, the Netherlands, Portugal, Belgium, there are monistic systems (integration systems), the European Convention being automatically incorporated into the domestic legal order by the effect of the national constitutional provisions (Udroiu & Predescu, 2008).

Therefore, the freedom of the judicial bodies to administer evidences must respect a balance between the right to privacy and the fundamental principles of the criminal trial.

Both the Convention for the Protection of Human Rights and Fundamental Freedoms and the Universal Declaration of Human Rights or the Charter of Fundamental Rights of the European Union adopted by the Nice European Council on 7 December 2000, expressly enshrines the right to respect for private life, family, domicile and correspondence. Thus, the statement of absolute principal value guarantees the fact that no person will be subjected to arbitrary interference in his private life, in his family, at his home or in his correspondence, being guaranteed also the respect for his honor and reputation.

The jurisprudence of the European Court of Justice comes in support of the above-mentioned, under Art. 8.

The European Court ruled on the incidence of Art. 8 of the Convention in the cases in which the telephone calls were intercepted in Klass and others against the Federal Republic of Germany where it was argued that "the German Basic Law allows certain authorities to open and control postal correspondence and mailings, read the telephone messages, intercept and record phone conversations, measures that make no doubt the interference in private and family life. From this point of view, the Court held that these forms of communication, although not expressly mentioned in the text of the Convention, are inherent in the notion of private life".

Conditions Provided by the European Convention, Derived from the Practice of the Strasbourg Court in Order to Guarantee the Right Provided by Art. 8

A first condition that needs to be met is that the interference in private life is provided by law. This involves not only respecting internal law, but also referring to the quality of the law, which must be compatible with the system of rule of law (Khan v. UK). From the "prescribed by law", two more requirements arise, concerning accessibility and predictability of the law. From the point of view of the need for foreseeability of the law, the European Court found that the law on intercepts and recordings of communications and conversations must be of particular precision, and the existence of clear and detailed rules appears to be indispensable (Huvig v. France).

A second condition provided by art. Article 8, paragraph 2, of the Convention is that the intervention of the authority must be necessary in a democratic society for the defense of a legitimate aim. "It is about protecting national security, preventing criminal offenses, and protecting the rights and interests of others. It is therefore considered that the existence of legislation permitting the interception of communications may be necessary for the defense of order and the prevention of crime, but the supervisory system adopted must be accompanied by sufficient safeguards against excesses" (Malone v. The United Kingdom).

The last condition to be specified is a creation of the European Court's jurisprudence, leading to the formulation of a new principle in the matter - that of proportionality. Therefore, it implies respecting the proportionality between the interference, namely the measure of public authority and the legitimate purpose defended (Bogdan, 2006). Consequently, it is necessary to determine the existence of a pressing social need that imposed the interference with the right to private life.

Art. 8 par. Article 2 of the Convention permits the interference of the authorities in the exercise of the right to correspondence in a restrictive manner and in compliance with the principle of proportionality, that is to say, only if the interference is prescribed by law and constitutes a measure that is necessary in a democratic state for national security, the country's economic well-being, the defense of order and the prevention of criminal deeds, the protection of health or morals or the protection of the rights and freedoms of others.

The making of secret interceptions should be authorized by national law, the use of secret listening devices in the absence of such authorization leading to the finding of violations of art. 8 of the Convention (Hewitson v. The UK) .

The Court states that, in order to comply with par. 2 art. 8 para. 2 of the Convention, such an interference must be prescribed by law. The expression "prescribed by law" imposes not only the observance of domestic law, but also refers to the quality of the law (Khan v. The United Kingdom). In the context of secret oversight exercised by public authorities, domestic law must provide protection against arbitrary interference in the exercise of the right of a person protected by art. 8 (Raducu v. Romania).

In another case, the court found the violation of art. 8 regarding police interception. Taking into account the fact that there are cases where people are consciously engaged in activities registered or publicly reported or likely to be, the expectation of a certain form of respect for privacy can play a significant role. Instead, privacy can come into play when there is a systematic or permanent recording of public domain items. The Court considered that obtaining samples of the applicants' complaints to be subjected to comparative analysis was the treatment of personal data, so that Art. 8 is applicable. The Court has held that the principle under which domestic law must protect against arbitrariness and abuse in the use of secret surveillance techniques also applies to devices installed in police premises. Taking into account that, at the time of the events, the British law did not contain any law permitting and regulating such cases, the Court found that the measure was not prescribed by law, so that art. 8 has been violated in this regard (PG, JH v. UK).

In Vetter v. France, the Court examined whether the installation of microphones was a measure prescribed by law. Thus, it was considered that art. 100 of the French Code of Criminal Procedure was not applicable as it only concerns the recording of telephone conversations and art. 81 does not provide for any condition in which the magistrate may impose restrictive measures on the privacy of a person. Therefore, in the absence of a minimum level of protection provided by national law, the Court

considered that the interference in the applicant's privacy was not prescribed by law, and Art. 8 was violated.

Another condition is that interference is necessary in a democratic state, but the Convention texts do not provide "the requirements of a society in order to be considered a democratic state, or whether in a society that does not fulfill the criteria to be considered to be democratic, the interference of the state authorities could be exercised without any limitations, being discretionary to take any measures" (Pivniceru & Moldovan, 2006).

Therefore, the task of interpreting the provisions of Art. 8 par. 2 returned to the European Court of Human Rights, which stated that the text cited is intended to provide protection against arbitrary interference by the authorities, and consequently set up a series of safeguards. (Hakkanen v. Finland)

The Court has only the possibility to analyze whether interference by state authorities is permitted under domestic law and whether it provides guarantees to the person against whom such measures have been ordered.

Thus, in the case of making secret videos at the police station, for the purpose of identifying a suspect, the Court found that there is a basis in domestic law, but the way in which the records were made on a permanent basis in the purpose of their use in a trial was considered as a treatment or collection of personal data and therefore the European Court held that the interference of the authorities was not prescribed by law (Perry v. The United Kingdom)

Regarding accessibility and predictability of the law, it is also necessary for the law to be accessible, as a matter of publicizing or informing the citizens of the normative texts, so that they may have the opportunity to consult them.

Faced with the requirement of accessibility, the Court analyzed compliance with Art. 8 in the case of the registration of a human rights activist in a database for secret surveillance and the keeping of such records, as well as his arrest in this context. The database containing the name of the plaintiff was created on the basis of a ministerial decision that was neither published nor disclosed to the public in any way. Citizens cannot know why a person is registered, for how long the information collected is preserved, what kind of information the database contains, how they are preserved and used, and by whom, in this respect violated art. 5 par. 1 and art. 8 (Shimovolos v. Russia).

Regarding the foreseeability of the law, the Court found in its case-law "violation of art. 8 of the Convention, noting that during the criminal investigations, the judge Elena Pop Blaga was illegally listened on the basis of interception warrants issued by the prosecutors, but also by the High Court of Cassation and Justice, between 1999 and 2003, interceptions which continued in 2005".

Furthermore, it is necessary to mention the necessity of compatibility of the law with the prerogative of law, domestic law having to use clear terms to indicate to the public to a sufficient degree, under what circumstances and under what conditions is possible for the public authorities to take such secret measures. Thus, the absence of public control and the risk of abuse of power imply that domestic law must provide protection against interference in the rights guaranteed by art. 8. (Halford v. UK, Kopp v. Switzerland)

As regards the preeminence of the law, in a recent case against the Netherlands (in the context of an open parliamentary inquiry into methods of investigation in the Netherlands due to a controversy over an inter-regional investigative cell in the North of the Netherlands (Utrecht)), the applicant, a police officer working for the criminal intelligence service, claims that part of the conversations he had with an informant were recorded with devices provided by the national police investigation department. As regards the violation of Article 8, the Court found that the applicant was deprived of the right to a minimum degree of protection required by the pre-eminence of the right in a democratic society, and also found it unacceptable that the authorities had provided technical assistance that were not the subject of rules to guarantee against arbitrary action (Van Vondel v. The Netherlands).

In the literature (Pivniceru & Moldovan, 2006) it is appreciated that in the name of the protection of the democratic society there is the possibility of abuses, which can seriously affect the respect for the private life and correspondence of the person and the internal law allowing such interference by the public authorities must contain strict and clear rules in order to providing guarantees for persons subject to such measures.

Therefore, it is necessary to provide for the categories of persons who can be heard, the nature of the offenses, the limit for the duration of the measure (Renucci, 2002), aspects regarding the drawing up of minutes recording the interceptions, the possibility of controlling these records by a judge or even by the defender, the circumstances in which their destruction may take place, etc.

Disclosure of Information from Files Resulting from Interception and Surveillance

Regarding the fact that in the last few years we have been witnessing the media coverage of the recordings in important public cases, without any repercussions for the persons responsible for disclosing confidential information from ongoing investigations, the European Court has established in a recent case the infringement against Romania due to the violation of article 8 in terms of disclosure in the press of extracts from the transcripts of telephone conversations intercepted by the authorities.

The Court examined whether the national authorities took the necessary measures to ensure the effective protection of that right by examining, first, whether the disclosure of the information had caused the applicant any damage and whether the measures taken by the authorities were appropriate (Casuneanu v. Romania)

As regards the first aspect, the Court noted that extracts from the criminal prosecution file were made public before the indictment was issued. Regarding the "leak" of information by the authorities, the court considered it irrelevant that the criminal case in which the applicant was investigated was of particular public interest.

In cases where confidential information has been given to the press, it is first and foremost for the Member States to organize their authorities and train their officials to ensure that no confidential or secret information is disclosed. As regards the consequences for the applicant of leaking information to the press, the Court emphasized that the applicant had no means at its disposal to protect his reputation because the allegations had not yet been substantively examined by a court and the authenticity or accuracy of the telephone conversations and their interpretation could not be challenged.

As a consequence, the applicant suffered a prejudice by interference with his right at private life because of the transmission to the press of the extracts from the transcripts of the telephone conversations. By its nature, the interceptions procedure is subject to judicial review and it is logical that the result of this procedure should not be made public without careful judicial investigation.

In another case (Craxi No. 2 v. Italy), the European Court recalls that, although the essential objective of Art. 8 is to protect individuals against arbitrary interference by public authorities, it is not limited to obliging the state to refrain from such interference.

The Court considers that appropriate safeguards should be available to prevent any such disclosure of a private nature which may be contrary to the safeguards of Art. 8 of the Convention, and when such disclosure has taken place, the positive obligation inherent in effective respect for private life entails the obligation to conduct effective investigations to correct the problem as far as possible.

It was established that private disclosures took place in violation of Art. 8 of the Convention, because the transcripts were submitted under the responsibility of the court secretary and the authorities didn't provide safe custody in order to guarantee the applicant's right to private life.

The European Court established that in Craxi no. 2, were no effective investigations in order to discover the circumstances in which journalists had access to the transcripts of conversations and to punish the persons responsible for the errors committed.

In fact, as they did not initiate effective investigations on the issue in question, the Italian authorities could not fulfill their alternative obligation to provide a plausible explanation as to the way in which the complainant's private communications were publicly disclosed. The Court therefore considers that the respondent State has failed to fulfill its obligation to guarantee the applicant's right to respect for his private life and his correspondence. Consequently, Art. 8 of the Convention was violated.

In another solution, the European Court found, with regard to the applicant's telephone conversation with JB, that it was not in compliance with the law, giving rise to a violation of Art. 8 of the Convention, relating to the disclosure of the applicant's talks in October and November 2003 with his business partners and the Head of State. In view of the inappropriate language used by the applicant during these conversations, the Court attaches some weight to his sentiment that it might, to a certain extent, the disclosure discredited the name of the applicant in business circles and the general public (Draksas v. Lithuania).

In essence, the court first referred to the principles governing the protection of the right to reputation by Article 8 of the Convention. As far as the principles are concerned, the framework in which they emerged is the Allenet de Ribemont judgment against France, the first case in which there was a violation of the presumption of innocence due to public statements by the officials.

It was considered that "the presumption of innocence is a necessary element for the existence of a fair trial in the sense of Article 6 paragraph 1 and considers that this presumption will be violated whenever a judicial decision concerning a person

accused of committing a criminal act reflects the opinion of the existence of guilt before it is established according to the law. Moreover, it is sufficient to have some reasoning of the court indicating that the accused is guilty of defrauding the guilt of presumption of innocence. These violations may also exist in proceedings not directly concerned with the determination of guilt" (Lăncrăjan, 2009).

It has been stressed that "public access to data contained in a criminal file is not unlimited but subject to rules that are applied by a judge, and at the request of the complainant access to the press may be limited. If there is no judicial control of public access to the file and the information is "leaked" to the press, what will be of importance will be firstly whether the Member State has organized its authorities and formed its officials to avoid the circumvention of the procedure and, secondly, whether the applicant has remedies in order to obtain redress for the violation of his rights" (Pettiti, 2009).

Guarantees Provided by Other States' Legislation on Interception and Recording of Conversations and Communications

A comparative analysis of the laws of the Member States in the European Union reveals a consolidation of cooperation in the criminal domain.

Significant contributions are made by applying the principle of mutual recognition of sentences, the European arrest warrant and the Framework Decision on enhanced cooperation in the fight against terrorism and organized cross-border crime (Himberg, 2008).

Enshrining the right to a fair trial at international level has been achieved through important legal instruments guaranteeing human rights such as the Universal Declaration of Human Rights[1], the International Covenant on Civil and Political Rights[2], the European Convention on Human Rights[3], the Charter of Fundamental Rights of the European Union[4], The American Declaration of Human Rights and

[1] The Universal Declaration of Human Rights, adopted and proclaimed by the General Assembly of the United Nations through Resolution 217 A (III) of 10 December 1948.
[2] Adopted and opened for signature by the General Assembly of the United Nations on 16 December 1966.
[3] Signed in Rome on 4 November 1950.
[4] J.O.U.E. no. C326/393of 26th of october 2012.

Responsibilities[1], the American Convention on Human Rights[2], the African Charter on Human and Peoples' Rights[3], the Universal Declaration of Human Rights in Islam[4] and the Arab Charter on Human Rights[5].

Issues Related to the Need for a Warrant or Interception Authorization

The comparative study of supervisory practices shows that the use of audio-video recordings by judicial bodies is usually conditional upon the issuance of a warrant or authorization, subject to some form of hierarchical control, but there are also derogatory situations from this rule.

Thus, electronic surveillance carried out in a public place will not always require a warrant, as there are forms of surveillance, such as video surveillance built into a vehicle, visual surveillance, the use of video operators by the officers and closed circuit video surveillance monitored by police, which have their own regulation, provided by codes of practice and procedural guides.

At the same time, we find that if supervision is carried out in a situation where the subject enjoys the right to privacy, a warrant is required. These forms of surveillance include, for example, intercepting communications (via fixed telephones, mobile phones, voice over IP) and installing and monitoring tracking devices. Issuing an authorization prior to intercepting ensures the lawfulness of obtaining the evidence, a guarantee which may have implications for their admissibility.

Recording Performed by One of the Parties

Regarding the recordings made by a person that takes part of the conversation, we note that in some states, if a person agrees to record the conversation, this is a condition of admissibility in court, if the law does not provide for the use of this

[1] The first international instrument adopted in the field of human rights, adopted in April 1948, at the 9th Conference of the American States.
[2] Adopted in San Jose, Costa Rica on 22 November 1969 at the Inter-American Specialized Conference on Human Rights, organized under the aegis of the Organization of American States.
[3] Adopted in Nairobi on 27 June 1981, at the 18th Conference of the Heads of State and Government of the African Union Organization.
[4] Adopted in Cairo on 5 August 1990 by 45 Foreign Ministers of States of the Organization of the Islamic Conference.
[5] Adopted by the League of Arab States in Tunis on May 22, 2004.

means of proof the need to obtain the consent of the other parties involved in discussions that do not know that the discussion is recorded.

In the latter hypothesis, the court will not be able to listen to the conversation, making the entries inadmissible. Conversely, the content of the conversation will be based solely on the memory of the person being heard, without any guarantee as to what was said in that discussion.

The Implications of the Breach of Legislation on Interception and Electronic Surveillance

In legislation where authorization for the conduct of electronic surveillance is required, usually interception of communications or undercover surveillance without a warrant is considered an offense, especially when the subject has a reasonable expectation of intimacy. Thus, at first glance, the officer who performed such surveillance will be criminally liable. However, there are also a number of exceptions, including, for example, where there is a mandate or if the officer acts in good faith, considering that supervision has been authorized.

The officer who carried out the unlawful supervision is very rarely held liable in most legal systems, with the most important sanction being the inadmissibility of evidence in criminal proceedings against the suspect. However, there are laws where evidence obtained illegally by electronic surveillance is not rendered inadmissible, and their admissibility will then be analyzed.

In Denmark and Norway, the collection of electronic evidence is carried out under the supervision of the prosecutor. If the prosecutor uses electronic methods of collecting evidence without the necessary judicial authorization, the evidence thus obtained will not be inadmissible. Instead, this will be a factor that the judge will consider when analyzing the probative value of the information obtained. However, collecting electronic evidence illegally by a prosecutor is a very rare event. Moreover, if it is not the result of a justifiable error, it may lead to disciplinary action or criminal charges.

Conclusions

In the context of the evolution of technology, the legislation of the EU member states is constantly adapting, and in order to ensure effective judicial cooperation, it seeks to harmonize laws as well as to regulate unambiguous provisions.

Each law regulates differently the conditions that need to be met for the issue of a warrant to authorize the use of the electronic surveillance procedure. The applicant must generally demonstrate that the use of electronic surveillance is necessary either in the interests of national security or for the purpose of preventing or investigating offenses.

Sometimes in order to be authorized to use of interception devices, the applicant must demonstrate that the offense in question is classified as a "serious crime" category which varies from state to state.

Often, the legislation will explicitly indicate the factors that need to be considered for issuing an warrant. The basis for such a request will be that there are reasonable grounds for believing that a relevant offense has been, is or will be committed.

Other factors that need to be examined are the probative value of the evidence to be obtained through electronic surveillance, the opportunity of alternative probative procedures and the condition that the warrant issued is in the interest of the administration of justice.

While many laws do not expressly state what the oral or written evidence must be attested to, others are quite rigorous about this. In addition, the judge will be able (even if not expressly provided for in law) to request additional evidence.

The scope of electronic surveillance warrants is limited, most national systems regulating electronic supervision provide expressly and in detail for information that a warrant should contain. These are usually substantially the same as those contained in the warrant application, a logical and necessary condition for law enforcement authorities to understand the scope of authorized legal supervision. Consequently, the duration, location and type of electronic surveillance will be specified in both the request and the warrant.

Also, the warrant will typically authorize the installation and recovery of a surveillance device in or on a particular place or thing. Sometimes there is also a requirement that, when the circumstances justifying electronic surveillance (and thus the mandate issued) cease to exist, the supervisor will be obliged to stop the procedure.

In general, there are certain strategic principles or considerations limiting the use of electronic surveillance for obtaining evidence in serious crime investigations, such as necessity, subsidiarity, proportionality and judicial control.

Thus, interference with privacy is allowed if obtaining electronic evidence is necessary to gather useful evidence or information and other less invasive forms of investigation or investigation are not sufficient. At the same time, the measure may be authorized when there are mechanisms to protect the confidentiality of information obtained, including the privacy of third parties not subject to authorization or warrant.

It is also necessary that private life intrusion be proportionate to the seriousness of the suspected offense and to the evidence that it is expected to be obtained and, last but not least, that the process of collecting evidence is supervised by an independent judge or other hierarchical superior body with a certain degree of authority.

The research we have carried out has highlighted positive and negative aspects, both at the theoretical and jurisprudential level, relative to the way audio and video intercepts and recordings are made.

From a criminal-law point of view, the scale of the criminal phenomenon and the evolution of technology impose a continuous adaptation of normative regulations, which requires an analysis of the various laws that have achieved greater success in combating and preventing crime.

References

*** Charter of Fundamental Rights of the European Union.

*** Khan v. United Kingdom, Application no. 19641/07, Judgment 8 December 2009.

*** Universal Declaration of Human Rights in Islam.

*** Universal Declaration of Human Rights.

African Charter on Human and Peoples' Rights.

Allenet de Ribemont v. France (interpretation), Application no. 15175/89, Judgment 07 august 1996.

American Convention on Human Rights.

American Declaration of Human Rights and Responsibilities.

Arab Charter on Human Rights.

Berger, V. (2005). *Jurisprudenţa Curţii europene a Drepturilor Omului. Ed. a 5-a în limba română/ Jurisprudence of the European Court of Human Rights. 5th edition in Romanian*. Bucharest: Institutul Român pentru Drepturile Omului.

Bîrsan, C. (2003). Protecţia dreptului la viaţă privată şi de familie, la corespondenţă şi la domiciliu în Convenţia europeană a drepturilor omului/ Protection of the right to private and family life, in correspondence and at home in the European Convention on Human Rights. *Pandectele Române – Supliment/ Romanian Pandects – Supplement,* no. 1/2003.

Bogdan, C. (2006). Interceptările audio şi video/ Vidoe and audio Interceptions. *Revista de drept penal/ Criminal Law Review,* no. 1-2006.

Bufinsky v. Romania, Applicatio no. 28.823/04, Judgment 2 July 2004.

Casuneanu v. Romania, Application no. 22018/10, Judgment 16 April 2013.

Craxi (No. 2) v. Italy, Application no. 25337/94, Judgment 17 July 2003.

Drakšas v. Lithuania, Application no. 36662/04, Judgment 31 July 2012.

European Convention on Human Rights.

Halford v. United Kingdom, Application no. 20605/92, Judgment 25 June 1997.

Hewitson v. The United Kingdom, Application no. 50015/99, Judgment 27 May 2003.

Himberg, K. (2008). The Crime Laboratory of the National Bureau of Investigations, Finlanda. Presentation of the main scientific progress made in proof in criminal cases.

Hokkanen v. Finland, Application no. 19823/92, Judgment 23 September 1994.

Huvig v. France, Application no. 11105/84, Judgment 24 April 1990.

International Covenant on Civil and Political Rights.

Klass and others v Federal Republic of Germany, Application no. 1979/80, Judgment 6 September 1978.

Kopp v. Switzerland, Application no. 13/1997/797/1000, Judgment 25 March 1998.

Kruslin v France, Application No 11801/85, Judgment 24 April 1990.

Lăncrăjan, A.C. (2009). *Încălcarea prezumţiei de nevinovăţie prin declaraţii oficiale ale reprezentanţilor statului/ Violation of the presumption of innocence by official statements by State representatives.* Bucharest: Institutul Naţional al Magistraturii.

Mahrabian, A. (1971). *Silent Messages*. 1st ed. Belmont. University of California.

Malone v. The United Kingdom. Application no. 8691/79, Judgment 2 August 1984.

P.G. & J.H. v. the United Kingdom. Application no. 44787/98, Judgment 25.9.2001.

Perry c. the United Kingdom, Application no. 63737/00, Judgment 17 July 2003.

Pettiti, L.E. (2009). *La Convention Europeene des Droits de L'homme, Commentaire article par article/ The European Convention on human Rights, commentary article by article*. Bucharest: Ed. Economica.

Pivniceru, M.M. & Moldovan, C. (2006). Respectarea dreptului la corespondenţă cu referire la interceptarea convorbirilor telefonice. Ingerinţa statelor. Garanţii – art. 8 parag. 2 din Convenţia europeană a drepturilor omului/ Observance of the right to correspondence with reference to the interception of telephone calls. Interference states. Guarantees – art. 8 Parag. 2 of the European Convention on Human Rights. *Analele Ştiinţifice ale Universităţii „Al. I. Cuza"/ Scientific Annals of "Al. I. Cuza" University, volume* LII, Ştiinţe juridice.

Răducu v. Romania, Application no. 70787/01, Judgment 21 April 2009.

Renucci, J.F. (2002). *Droit europeen des droits de l''homme/ European Human Rights law*. Paris, L.G.D.J: Publishing House.

Shimovolos v. Russia, Application no. 30194/09, Judgment 21 June 2011.

Stoian, V., (2011), *Abordări teoretice şi practice referitoare la activitatea de comunicare socială – colecţie de articole on-line/ Theoretical and practical approaches to social communication activity – Collection of online articles*. Bucharest: AIT Laboratories SRL Publishing House.

Udroiu, M. & Predescu, O. (2008). *Protecţia europeană a drepturilor omului şi procesul penal român – Tratat/ European protection of human Rights and the Romanian Criminal process – treaty*. Bucharest: C.H. Beck Publishing House.

Uzun v. Germany, Application no. 35623/05, Judgment 02.09.2010.

Van Vondel v.The Netherlands, Application no. 38258/03, Judgment 25.10.2007.

Vetter v. France, Application no. 59842/00, Judgment 31 May 2005.

Volonciu, N. & Barbu, A. (2007). *Codul de procedură penală comentat. Art. 62-135. Probele şi mijloacele de probă/ Code of Criminal Procedure commented. Article. 62-135. Evidence and means of proof*. Bucharest: Hamangiu Publishing House.