

Analysis of the Opportunity to Include Intelligence Officers in the Category of Special Criminal Investigation Bodies

Bogdan Bîrzu¹

Abstract: Situations referred to in art. 3 of Law no. 51/1991 on Romania's national security (national security threats) and Law No. 78 of 8 May 2000 on preventing, discovering and sanctioning of corruption, law no. 39/21.01.2000 on preventing and combating organized crime, published in the Official No. 50/29.01.2003 and Law no. 143/26.07.2000 on combating illicit drug trafficking and consumption, represent the legal basis for requesting the Prosecutor, in justified cases, to compliance with the Code of Criminal Procedure, the authorization to perform certain acts in order to gather information, consisting of interception of communications, search for information, documents or acts for which to be obtain is required the access in a place, an object or opening an object, lifting and replacing the place of an object or document, examine it, extracting the information they contain, as well as recording, copying, or getting extracted by any means, installation of objects, maintaining and taking them from places where they were submitted. In order to elucidate the relationship established between the work of intelligence officers and prosecutors will submit to examination following essential aspects: information, information activities, investigative activities, prosecution prior acts (legal nature, duration, jurisdiction, content, prosecutor supervising the preliminary acts).

Keywords: intelligence; investigation; operative surveillance; preliminary acts

1. Introduction

Information is defined as: communication, news, news that put anyone aware of a situation, an explanation on someone or on something, all information and documentary material, sources, sources (information in French, Latin *Informatio*).

Informative activity is, in fact, a confrontation between investigative structures and the criminal organizations, in which each of the camps is collecting data about "opponent" to achieve their targets. Given this confrontation, the success of the investigative activities is essentially dependent on the capacity of the judicial body to communicate, to procure information needed to conduct the investigation. High quality legal information, transmitted in real time and used when appropriate can have a decisive role in solving a case.

¹ Phd candidate, Titu Maiorescu University, Address: 187, Vacaresti Street, Bucharest, Romania, Tel.: +4021.316.16.46, Corresponding author: birzu_bogdan@yahoo.com.

For example, investigating specific offenses of organized crime requires thorough knowledge of the phenomenon through the collection, storage and processing in databases of a large volume of information on criminals, criminal record, criminal organizations operating modes, suspicious transactions, etc. Data flow is oriented to supplying information to investigation and prosecution activities of the judiciary.

Practice the prosecution pointed out that the fight against crime, in particular organized crime phenomenon, through three major phases: informative, inquiry and investigation. Informative phase includes specific activities conducted continuously, conspired and organized by specialized structures, for documenting the activities of criminal networks.

In accordance with the laws of organization and functioning of Romania specialized structures that make up the Intelligence Community, namely the Romanian Intelligence Service, Foreign Intelligence Service, the Protection and Guard Service, and the internal structures of the Ministry of Justice, Ministry of Interior and the Ministry of National Defence, develop their own databases and information.

2. Intelligence. Investigative Activity

Intelligence structures have their own plans for gathering information. Plans include areas in which the collection of information (eg privatization, customs, bank loans, subsidies, etc.), categories of persons covered by the surveillance operations and gathering information (eg leaders of criminal networks, customs, civil, etc.), surveillance operations and gathering information (eg informants, stakeouts, undercover agent, interception, access to the database, supervision of accounts), methods of analysis and exploitation of information with employees empowered to carry out operative acts prior to prosecute and to exploit the information material in criminal prosecution.

The process of searching, gathering, processing and transmission of information, referred to in specialized terms as informational cycle comprises the following phases: planning, involving the establishment of user requirements (type of information required, susceptibility of intended activity, likely effectiveness of data collection), access to the target, eg interception of communications; selecting messages and collecting information, processing that may involve translation or “extracting essence” message, analyzing, evaluating and interpreting the raw data to “produce” intelligence and the last phase, drafting reports consisting of raw message (decrypted and /or translated), synthesis, notes, comments or extensive analysis.

Intelligence structures should actively cooperate in specific cases for a complete documentation in order to progress in the next phase, the investigation. For example, accounting data and clues to the existence of a criminal network of fake currency placers, through a police specialized structure the area where illegal foreign exchange practice is put under operative surveillance. Judge or, where appropriate, the prosecutor may authorize the audio-video recordings.

Information obtained by checking the number plates of the cars in the area and establishing the identity of fake currency placers allow authorizing recording their conversations and their e-mail correspondence. Then the dialed phone numbers and e-mail addresses are verified. I then identified users, members of the network who are put under surveillance by obtaining data volume for the organization undertaking the act. Then the users are identified, members of the criminal network who are put under surveillance until obtaining the necessary data volumes for organizing the arrest.

Investigative phase consists of all the activities carried out by specialized structures to verify the information obtained during the intelligence phase. These activities include: operative surveillance of suspects through stakeout, surveillance of a place, including judicial photos and videos, checking of suspicious transactions, acts and records of the perpetrator, to obtain data by Interpol and so on.

During the investigative phase are identified and provided evidence to be given in criminal prosecution. Thus, there can be identified witnesses, victims, suppliers, intermediaries, etc. and their reports can be mentioned in the official records.

In the work of the judiciary there are frequent shortcomings in the travel time from information to the investigation and then to the inquiry. One of the worst is the “syncope” in the stage of preliminary acts occurred between intelligence activity and criminal investigation. Information, highly perishable product, undergoes a process of “aging” quickly so not being used at the right time to be transformed into evidence, it loses value. Knowing all information materialized by investigation, the investigators are able to assess the probative value of the material collected, to determine the appropriate time to begin the investigation and transformation of intelligence in evidence in accordance with criminal procedure.

3. The Materialization of Investigative Work in Probation. Preliminary Acts

Preliminary acts are defined in the legal literature as investigation means that checks the reliability of a complaint, and the existence or absence of any of the cases provided for in art. 10 Criminal Procedure Code.

Operative policemen within Ministry of Interior specially appointed are entitled under art. 224 para. 2 Criminal Procedure Code, to perform preliminary actions “to

collect the data needed by the prosecution for criminal prosecution”. Such policemen are those nominated by their commanders within the police structures (divisions against economic and financial fraud, organized crime, corruption, etc..) having specific responsibilities for discovering and identifying perpetrators and antisocial acts. In this category are included the officers with responsibility for collecting information from the Department for Intelligence and Internal Protection.

To this end they collect and store in databases specific information about crimes and their perpetrators, verify the investigative activities, identify and provide the probation means to be given in the criminal prosecution phase. For a better understanding of the role of these intelligence officers here are some of their activities and the ones carried out on the basis of the intelligence provided by them:

Investigative activities which to be effective usually have a discreet character and consist in verifying the information held or supplementing them by:

- a) Operative Surveillance, defined as a secret observation, continuous or periodic, on persons, vehicles, surveillance may be mobile when the investigator observes a person on foot or in a vehicle moving. It is static if an object or person is observed continuously from a fixed point (home test van). Electronic surveillance is when, under the law, telephone, environmental calls or systems are recorded with an electronic device. During surveillance action it is possible to be taken tracking pictures and videos (authorized by law). It can also be monitored by electronic surveillance: personal expenses incurred by the use of credit cards, mobile phones by getting the list of calls or by applying GPS user location; can be recorded by electronic the automobile routes and monitored private or public spaces by closed circuit cameras.
- b) Checking the sources of income of a suspect who through the way of living exceeds bounds of lawful earnings. This activity requires determining what kind of business does the suspect do, if he owns a company and if he commits fraud through the company, the circle of social relationships, influences etc.
- c) Verification of documents and records that have been used by perpetrator and checking suspicious transactions. In relation to the nature and mode of fraud the prosecution body may conduct checking of advertising documents submitted to the Trade Register in cases dealing with judicial reorganization and bankruptcy of companies, etc.
- d) Obtaining data via INTERPOL - an important investigative activity as Interpol provides access to international computer network of files on criminal activities. Following the completion of a request for verification of secret information, an investigation into the database using the name of the offender or company involved is conducted.

There are also admitted the investigative activities which usually don't have a discreet character:

- a) Organization of a filter – police action consisting of checking traffic in specific situations where exist data and indications of transport of suspicious persons or objects. This investigative action is commonly used with operational oversight to verify existing data on certain shipments of smuggled goods.
- b) Making a raid representing a police action which is performed usually based on the surprise effect on the locations and environments frequented by delinquent groups in order to surprise the criminals and apprehend them in the act and arrest those given in APB
- c) Legitimacy and identifying strangers and taking them to police units are investigative activities useful for the detection of wanted criminals (e.g. criminals who hide under a false identity, etc.).

Operative workers can perform similar tasks with some formal procedural acts but do not take their legal clothes such as:

- a) Oral or written request of relationships of individuals, a particularly useful where information held are checked and are complete with new information about facts and perpetrators.
- b) Checking the technical assumptions;
- c) Collecting the phone records from phone companies;
- d) Management verification by conducting an accounting inspection, activity that has common elements with expertise;

Another category of activities made by operative officers is represented by activities that are consecrated in the criminal procedure law and can be made in case of necessity only as regulated by the Code of Criminal Procedure:

- a) Lifting objects and documents is governed by art. 96-99 of Criminal Procedure Code offers the possibility of obtaining certain acts, a subsequent examination of the documents and to make a technical-scientific report according to art. 112-115 Criminal Procedure Code.
- b) The search is an activity carried out by the judiciary body in order to discover and lift objects, documents or values of importance to the investigation, and to discover people who evade prosecution.
- c) Technical-scientific research to clarify some facts or circumstances of the case which requires the expertise of a specialist or technician.
- d) Crime scene investigation.

e) Conversations recording and other audio-video recordings whose use has generated controversy in the legal literature specialist.

f) Surveillance of bank accounts and the accounts assimilated, represents a new investigative process, used for gathering evidence or identifying the perpetrator, when there are clues about committing corruption, organized crime or money laundering.

In the activities of o specific designated operative officers an important place are the preliminary acts performed by undercover investigators.

This investigative process, originally used mainly in research of drug trafficking has proven effective in research of other crimes especially those in the field of organized crime.

Undercover investigators are operative workers within the Ministry of Interior and the state bodies who perform intelligence activities for national security, specifically appointed for this purpose and can be used in accordance with the law, to collect data and information for the use of prosecution body.

Covered investigation is defined as a special research technique applied by a particular unit in accordance with the, consisting of the entry under a secret identity of a policeman in contact with a particular group of individuals who participate in a crime, or keeping in touch with such determined group, to which there are objective factors that lead to the assumption of committing crimes in the sphere of organized crime. Authorization for using undercover investigators is ordered by the prosecutor appointed by the general prosecutor of the court of appeal for up to 60 days and may be extended if justified.

To protect undercover investigators, their real identity will not be disclosed during or after completion of their action, except to the competent prosecutor to issue the authorization, who is entitled to know his true identity.

Information obtained will be materialized in investigative reports which will be periodically presented to the prosecutor overseeing the investigation, and finally will be able to edit the acknowledgement minutes of preliminary acts pursuing.

Another method to obtain information prior to performing preliminary acts is the use of information sources. Source Information (CI) is defined as the person who has knowledge of the committing of certain offenses or of an organized criminal group and provides relevant information to judicial for prevention, detection and punishment of perpetrators.

May be an informant also the person who is in custody and who contributes to finding the truth in criminal cases provided by law by providing crucial information or data.

With EU accession the Romanian intelligence officers will have to be in line with European standards which means using modern methods of gathering information and to show a special interest for the development of pro-active investigative techniques for carrying out special investigations and ante-delictum investigations, useful before an offense has been committed or found (eg: the “screen” societies providing services for criminal networks, using new technologies to access information systems, etc.)

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