

INTERDISCIPLINARY APPROACH TO SPECIAL TECHNIQUES - UNDERCOVER INVESTIGATIONS - SUPPORT FOR CONSOLIDATING THE METHODOLOGICAL AND APPLICABLE FRAMEWORK

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Abstract

Within the limits of the economic, social and legal dimensions of globalization, along with the social, economic, cultural and political benefits, there are also harmful phenomena such as social deviance and its many manifestations. In their wake, transnational and transcontinental organised crime, in its various forms, stands out: drug trafficking, illicit arms trafficking, trafficking in nuclear materials, terrorism, prostitution, paedophilia, money laundering, theft and smuggling of expensive cars, theft and smuggling of cultural heritage objects, kidnapping of businessmen and celebrities for the purpose of blackmail and extortion, corruption in multinational companies, perversion of government officials, truck and ship piracy, environmental pollution and theft of money through computers, etc. No less dangerous, with an increased degree of damage are manifestations of organized crime, property crime, tax evasion, corruption, crimes against the person, real estate, computer fraud, etc. committed on a national scale. Taken as a whole, transnational and national-level crimes affect public security, undermine the sovereignty of States and disrupt the proper functioning of economic, political and social institutions. For a proper perception and positioning of special (operative) investigative techniques, it is necessary to clarify the specific features of these categories of crimes, the manoeuvres of preparation and commission of these categories of crimes, the particularities of the material element, the characteristics of the active subjects, the consequences, the damage and other aspects.

Keywords: special technique, special investigative measures, organised crime, criminal organisations

Globalisation processes are as objective as they are irreversible, but they are also controversial, with unpredictable and impossible-to-calculate effects.

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Individuals, regardless of race, nationality, religion, etc., wherever they are, in whatever country they live, have always aspired to a life of food and goods, with quality services and comforts, aspirations that are achieved not only through legal means but also through criminal acts and means. For example, according to UN data, at the beginning of the millennium, three of the richest people on earth owned capital equivalent to the GDP of about 50 underdeveloped countries, and 360 families own wealth equivalent to that of 2.5 billion people.

Within the limits of the economic, social and legal dimensions of globalisation, alongside the social, economic, cultural and political benefits, there are also harmful phenomena such as social deviance and its many manifestations. These include transnational and transcontinental organised crime in all its forms: drug trafficking, illicit arms trafficking, trafficking in nuclear materials, terrorism, prostitution, paedophilia, money laundering, theft and smuggling of expensive cars, theft and smuggling of cultural heritage, kidnapping of businessmen and celebrities for the purposes of blackmail and extortion, corruption in multinational companies, perversion of government officials, truck and ship piracy, environmental pollution and money theft via computers, etc. No less dangerous and more damaging are the manifestations of organised crime, property crime, tax evasion, corruption, corruption against the person, real estate crime, computer fraud, etc. committed on a national scale. Taken as a whole, transnational and national-level crimes affect public security, undermine the sovereignty of States and disrupt the smooth functioning of economic, political and social institutions.

For a proper perception and positioning of special (operative) investigative techniques, it is necessary to clarify the specific features of these categories of crimes, the manoeuvres of preparation and commission of these categories of crimes, the particularities of the material element, the characteristics of the active subjects, the consequences, the damage and other aspects.

In the literature it has been shown, referring to the opinion of the author C. Păun, that organized crime is characterized by the criminal activities of groups formed on conspiratorial principles, in order to obtain significant illicit revenues. [In another opinion, that of the author O. Pop, a series of specific features of the criminal organisation are identified:

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- a) Structure. Network members have tasks and responsibilities according to their specific training and ability. But the structure is also characterised by strict hierarchy and authority.
- b) Hermeticism and conspiracy. This feature derives both from the old socio-cultural origin of the phenomenon and from objective needs determined by the need for self-protection, to avoid the penetration of their own ranks by bodies empowered by law.
- c) Flexibility, speed and infiltration capacity. Over time, mafia-type criminal organisations have shown an extraordinary capacity to adapt both to their preferred areas of activity and to the specific socio-political and historical conditions of the countries in which they have been set up.
- d) Transnational nature of criminal organisations. The wide opening of borders, the development of legislation that is extremely permissive of external factors, poor economic development, political instability and corruption in poor countries have created exceptional opportunities and loopholes for the expansion and globalisation of criminal organisations.
- e) Profit orientation. This trait characterises the activity of criminal organisations. Profit is made by maintaining a monopoly in the areas in which they operate: drug trafficking, gambling, pornography, prostitution, arms trafficking, etc.
- f) Use of force. It is essential in achieving its objectives and is manifested through intimidation, blackmail, corruption and violence. The use of force is aimed at: 1) maintaining internal discipline; 2) punishing those who do not obey or act against criminal demands and interests [1b, p. 14]. The author Ursu V. agrees, who ascribes to organized crime crimes committed as a permanent occupation, through the efforts of persons united in stable, specially formed, well-organized, conspired and protected from exposure (including with the help of corrupt connections) criminal formations, formations that operate on their own, or that constitute structural parts of a criminal system of interregional or transnational level [1c88].

The experience gained in the field of preventing and combating crime and ensuring the rule of law shows us that it is through the application of special (operational) investigative techniques that it is possible to timely discover criminal intentions, preparatory actions, attempted crimes, especially perpetrators.

The usefulness and effectiveness of special (operational) investigative techniques are indisputable in uncovering the criminal offences mentioned above, and it is through the use of special (operational) investigative techniques that it is possible to fully establish the circumstances of the offence, the reasons for committing it, and to obtain legally valuable data which would prove the guilt of the perpetrators

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according to their participation in the offence. Finally, the application of special (operational) investigative techniques in the process of collecting primary information and documenting it contributes to the measures taken to ensure the restitution of material damage.

Thus, the world's states need to work more closely together to combat organised crime, in accordance with their domestic legislation and using international mechanisms to gather the information and data needed by the institutions responsible for preventing and eliminating these crimes, and to prosecute and hold perpetrators accountable. A particular role in the anti-crime toolbox is played by special crime investigation techniques, as provided for in several international instruments, namely: UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988); UN Convention on the Suppression of the Financing of Terrorism (1999); UN Convention against Transnational Organised Crime (2000); Resolution No. 1. 373/2001 of the UN Security Council against Terrorism; UN Convention against Corruption (2003); European Convention on Mutual Assistance in Criminal Matters (1959); European Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990); Council of Europe Criminal Law Convention on Corruption (1999); Council of Europe Convention on Cybercrime (2001); Council of Europe Convention on Action against Trafficking in Human Beings (2005); Recommendations (2005) 10 of the Committee of Ministers of the Council of Europe on special investigative techniques in criminal investigations.

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted on 20 December 1988 in Vienna [1]. The Convention provides for: the criminalisation and punishment of drug trafficking offences, the confiscation of the proceeds of drug trafficking offences, the extradition of the perpetrators of drug trafficking offences, mutual legal assistance, and the intensification of forms of cooperation in preventing and combating drug trafficking. In accordance with the provisions of Article 21 "Combating illicit drug trafficking" of the Convention, States Parties shall take into account their constitutional, legal and administrative systems:

- a) ensure the coordination of preventive and repressive action against illicit trafficking at the national level;
to this end, they may designate an appropriate service responsible for such coordination;
- (b) assist each other in the fight against illicit trafficking in psychotropic substances and, in particular, transmit to the other parties directly concerned, through

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diplomatic channels or through the competent authorities, a copy of each report to the Secretary-General of the United Nations following the discovery of a case of illicit trafficking or following a seizure;

(c) co-operate closely with each other and with the competent international organisations to which they belong,

for the purpose of conducting a coordinated fight against illicit drug trafficking;

(d) ensure the rapid implementation of appropriate international cooperation and provide mutual assistance in the conduct of criminal investigations, including the use of special investigative techniques;

(e) ensure that, when procedural documents are transmitted between countries for the purpose of instituting legal proceedings, the transmission is effected through expeditious channels to the courts designated by the parties.

International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999 [2].

The Convention provides for: measures to prevent and deter, by appropriate domestic means, the financing of terrorists or terrorist organisations, to counter illicit arms trafficking, drug trafficking and extortion, including the exploitation of persons for the purpose of financing terrorist activities, and the adoption of effective measures to prevent the financing of terrorism and to suppress it and punish the perpetrators. In accordance with Article 18 of the Convention, States Parties shall cooperate in preventing and combating the financing of terrorism by:

(a) measures for the supervision of all money transfer bodies, including, for example, the approval of such bodies;

(b) realistic measures to detect or monitor the physical cross-border transportation of cash and negotiable bearer instruments provided that they are subject to strict safeguards to ensure that the information is used knowingly and that they do not impede in any way the free movement of capital.

(c) by exchanging information and coordinating administrative and other measures to prevent the commission of offences covered by the Convention;

(d) cooperating with each other in carrying out criminal investigations, undercover operations relating to offences incident to the Convention.

United Nations Convention against Transnational Organised Crime, adopted in New York on 15 November 2000 [3].

The Convention provides for the criminalisation of participation in an organised criminal group, the criminalisation of laundering of the proceeds of crime and the introduction of measures to suppress it, the criminalisation of corruption and the adoption of measures to prevent and

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combat corruption, and the criminalisation of the obstruction of justice. In Art.20 Special investigative techniques of the Convention States Parties under its legal system:

1. take the necessary measures to enable the appropriate use of controlled deliveries and, where it considers it appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.

2. For the purposes of investigating offences covered by this Convention, States Parties shall encouraged to conclude, where necessary, appropriate bilateral or multilateral agreements or arrangements for the use of special investigative techniques in the framework of international cooperation.

3. In the absence of such agreements or arrangements, decisions to have recourse to investigative techniques techniques at the international level shall be taken on a case-by-case basis and may, where necessary, take into account the arrangements and financial arrangements as regards the exercise of their competence by the States Parties concerned.

4. Controlled deliveries decided upon at the international level may include, with the consent of the States Parties concerned, methods of intercepting the goods and authorising the tracing of their routing, without modification or after their removal or replacement in whole or in part.

The United Nations Convention against Transnational Organized Crime (2000) also provides for

appropriate measures to ensure effective protection against possible acts of retaliation or intimidation of witnesses who, in the course of criminal proceedings, testify in respect of offences covered by the this Convention and, if necessary, their parents and other persons close to them (Article 24).

Combating transnational organised crime, according to the Convention, will also include measures designed to strengthen cooperation between the investigative and law enforcement services of States Parties. Thus, according to Article 26 of the Convention:

1. Each State Party shall take appropriate measures to encourage persons who participate or have participated in

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in organised criminal groups to supply information useful to the competent authorities for the purposes of investigation and evidence-gathering;

2. Each State Party shall consider providing for the possibility, in appropriate cases, of reducing the penalty

of an accused person who cooperates substantially in the investigation or prosecution of an offence provided for in this Convention;

3. Each State Party shall consider providing for the possibility, in accordance with the fundamental principles of its domestic law, of granting immunity from prosecution to a person who substantially co-operates in the investigation or prosecution of an offence provided for in this Convention.

UN Security Council Counter-Terrorism Resolution 1.373/2001 [4] decides that all States:

2) letter f) to provide each other with full support for investigations and prosecutions related to the financing

or support of terrorist acts, including assistance in obtaining the evidence they hold which is necessary

criminal proceedings;

(3) subparagraph (a) identify means to enhance and expedite the exchange of operational information,

in particular with regard to actions or movements of terrorists or terrorist networks; documents of

travel documents; trafficking in arms, explosive or other dangerous materials; use of technology

communications technology by terrorist groups and the threat created by terrorist groups' possession of weapons of mass destruction;

b) exchange information in accordance with domestic and international legal provisions

and to cooperate in the administrative and judicial fields to prevent the commission of terrorist acts.

United Nations Convention against Corruption adopted in New York on 31 October 2003 [5].

The Convention provides for the adoption of measures to prevent corruption, to conduct investigations and prosecutions of corruption, and to freeze, seize, confiscate and return the proceeds of corruption offences. In accordance with the provisions of Article 50 Special investigative techniques of the Convention:

1. In order to combat corruption effectively, each State Party shall, within its means, take measures

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necessary to enable its competent authorities to make appropriate use, within its territory, of controlled deliveries and, where it considers it appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, and to ensure that evidence gathered by such techniques is admissible in court.

2. For the purposes of investigating offences covered by this Convention, States Parties are encouraged to conclude, where necessary, appropriate bilateral or multilateral agreements or arrangements for the use of special investigative techniques in the framework of international cooperation.

Council of Europe Convention on money laundering, search, seizure and confiscation of the proceeds from crime, adopted in Strasbourg, 8 November 1990 [6]. The member states of the Council of Europe are aware of the need to pursue a common criminal policy which would aim at the protection of society, considering that the fight against serious crime, which is increasingly becoming an international problem, requires the use of modern and effective methods at the international level, considering that, one of these methods is the deprivation of the criminal of the proceeds of crime, considering that in order to achieve this objective a satisfactory system of international cooperation should be established, have agreed on the Convention on money laundering, search, seizure and confiscation of the proceeds from crime. According to Article 4 Special investigative powers and techniques of the Convention:

1) Each State Party shall adopt such legislative and other measures as may be necessary to enable the courts to judicial or other competent authorities to order the communication or seizure of bank, financial or commercial records for the purposes of seizure and confiscation. No State Party shall invoke bank secrecy to refuse to apply the provisions of the Convention.

2) Each State Party shall consider adopting such legislative and other measures as may be necessary to permit the use of special investigative techniques that would facilitate the identification and tracking of proceeds of crime and the collection of relevant evidence.

Council of Europe Convention on Cybercrime, adopted in Budapest, 23 November 2001 [7]. In accordance with the provisions of Article 23 International Cooperation of the Convention, States Parties shall cooperate with each other in applying the relevant instruments of international cooperation in criminal matters, agreements concluded and their domestic law to the fullest extent possible for the

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purpose of investigating or prosecuting offences relating to computer systems and data or for gathering evidence of an offence in electronic form.

Council of Europe Criminal Law Convention on Corruption, adopted in Strasbourg on 27 January 1999 [8]. Article 23 "Measures to facilitate the collection of evidence and seizure of proceeds" states: Each State Party shall adopt such legislative and other measures, including those permitting the use of special investigative techniques in accordance with national law, as may be necessary to facilitate the collection of evidence relating to the offences set forth in the Convention and to enable it to identify, investigate, freeze and seize instrumentalities and proceeds of corruption or property the value of which corresponds to such proceeds. Banking secrecy will not be an obstacle to the anti-corruption measures referred to in the Convention.

Council of Europe Convention on the fight against trafficking in human beings, adopted on 3 May 2005 [9]. Chapter 6 Investigations, prosecutions and procedural law of the Convention provides that States Parties shall shall adopt such legislative and other measures as may be necessary to ensure effective and adequate protection of victims, witnesses and persons collaborating with judicial authorities. States Parties shall cooperate with each other, in accordance with the provisions of this Convention and through the application of relevant regional and international instruments, arrangements agreed upon on the basis of uniform or reciprocal domestic laws and their domestic law, for the purpose:

- preventing and combating trafficking in human beings;
- protecting and assisting victims;
- investigating or prosecuting offences of trafficking in human beings.

According to Recommendation (2005) 10 of the Committee of Ministers of the Council of Europe, special investigative techniques means techniques applied by the competent authorities in criminal investigations aimed at detecting or investigating serious crimes and suspects in order to gather information in such a way that the persons concerned are unaware of it. According to Recommendation 10 (2005) of the Committee of Ministers of the Council of Europe, special investigative techniques are defined as special means, including interception of communications and access to communications traffic and location data, clandestine surveillance and electronic audio and video surveillance of public places and private premises, clandestine search of private premises, controlled

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delivery, infiltration of undercover agents and use of informants, clandestine surveillance of financial transactions and other clandestine measures applied by competent bodies in the framework of criminal investigations for the purpose of detection or investigation of serious criminal offences.

The first and main European instrument devoted to international mutual legal assistance in criminal matters is the European Convention adopted in Strasbourg on 20 April 1959, which entered into force on 12 June 1962 [10]. The European Convention on Mutual Assistance in Criminal Matters was supplemented by the first Additional Protocol of 17 March 1978 and on 8 November 2001 by the Second Protocol [11]. An important step in the modernisation of mutual legal assistance in criminal matters was the Schengen Convention of 19 June 1990, which was subsequently supplemented, together with the European Convention of 20 April 1959, by the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union concluded on 29 May 2000 [12].

In the field of international cooperation in criminal matters, Article 19 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ratified by Law No 368/2004) provides that: "(1) The requesting Party and the requested Party may agree to assist each other in the conduct of criminal investigations by undercover agents or under a false identity. (2) The competent authorities of the requested Party shall decide in each case how to respond to the request, taking into account national law and procedures. The two Parties shall agree, in accordance with their national laws and procedures, on the duration of the undercover investigation, its specific modalities and the legal status of the agents involved. (3) Undercover investigations shall be conducted in accordance with the national laws and procedures of the Party in whose territory they are carried out. The Parties involved shall cooperate to ensure the preparation and conduct of and take decisions on (4) Any Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by declaration addressed to the Secretary General of the Council of Europe, shall indicate the authorities which it designates as competent for the application of the provisions of §2. Subsequently, any Party may, at any time and in the same manner, change the particulars of its declaration".

Undercover investigations may thus take place on the basis of an agreement between the competent authorities of the States in question, whereby they agree, in

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accordance with their national law, on the duration of the investigation, the practical arrangements for carrying it out and the legal status of the agents involved. A covert investigation shall be carried out only under the conditions and in accordance with the procedure laid down in the law of the State in whose territory in which undercover agents are operating [13].

The practical-scientific approach to undercover investigations has developed more eloquently in recent decades, with the rise of terrorism, transnational organised crime and its more dangerous manifestations on the one hand, and the strengthening of the international anti-crime legal framework and the intensification of state cooperation to prevent and combat crime on the other. Thus, for the first time, the European Court of Human Rights ruled on the conformity of operational infiltration practices, defined as undercover investigations and/or undercover operations, with the provisions of the ECHR, in the case of *Ludi v. Switzerland*, of 15 June 1992 [1].

In the present case, the use of an undercover agent did not, either in itself or in combination with the telephone tapping, affect the right to privacy within the meaning of Article 8 ECHR. The actions of the undercover agent were carried out in the context of the sale of a 5 kg consignment of cocaine. The cantonal authorities, alerted by the German police, selected an agent to infiltrate, in their view, a vast network of traffickers who intended to sell a consignment of drugs in Switzerland. The aim of the operation was to arrest the traffickers at the time of the drug transmission.

The undercover agent then made contact with the complainant, who told him he was prepared to sell him 2 kg of cocaine worth 200,000 Swiss francs. From that moment on, the *cet. Ludi* should have been aware that he had committed a criminal offence falling under the provisions of the Narcotics Act and therefore risked meeting an undercover police officer who was, in fact, seeking to expose him. European Union Member States such as France, Italy, Denmark, Belgium and Germany currently have appropriate legislation on undercover techniques used in relation to serious crimes for which traditional methods of investigation have proved ineffective. Special (operational) investigative measures, which are not intrusive, and to which informers, agents provocateurs, other confidants [2] are also assigned, are the subject of departmental regulations - instructions and internal regulations. It is interesting to note that in France, in addition to internal departmental acts, problems of police cooperation with confidants are also resolved

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by court decisions. Thus, the Ghere District Court [3] has recognised the legality of using informers in police work.

With regard to "undercover" techniques used in relation to serious crimes, in France, Law No 2004-204 of 9 March 2004, in the text of Art. 706-73, [4] 15 types of offences containing the most serious forms of organised crime are included: Organised gang murder, organised gang torture and acts of barbarism, organised gang drug trafficking crimes and offences, organised gang kidnapping and abduction crimes and offences, serious human trafficking crimes and offences, serious pimping crimes and offences, organised gang theft crimes, serious blackmail and extortion crimes, destruction crimes, damage to and destruction of property committed in an organised gang, crimes relating to counterfeiting of currency, crimes and offences of terrorism, offences relating to weapons committed in an organised gang, offences relating to the illegal entry, movement or residence of a foreigner in France committed in an organised gang, offences relating to money laundering or concealment of offences, offences of conspiracy. In addition to these, under the new Article 706-74 of the French Criminal Procedure Code, there are any other offences committed in an organised gang not listed in Article 706-73. According to Art. 132-71 of the French Criminal Code, "organised gang" is defined as "any group formed or any conspiracy established with a view to preparing one or more offences, characterised by one or more material acts of this kind". In France, the commission of a crime by an organised gang is the main criterion for defining organised crime and delinquency which makes it necessary and possible to apply specific procedural rules, including special investigative techniques and, where appropriate, undercover investigations [5, p.6-7].

Under French Law No 2004-204 of 9 March 2004, the main aim of which is to step up measures to combat organised crime, the infiltration procedure, previously provided for only in the field of drug trafficking and now extended to other offences (belonging to organised crime), consists of surveillance by a criminal investigation officer or police officer of persons suspected of committing a crime or misdemeanour, in such a way as to appear to that person as one of their co-perpetrators, accomplices or concealers. It is extended to the most serious forms of organised crime and must be authorised by the public prosecutor or investigating judge. However, the law stipulates that no conviction may be pronounced solely on the basis of statements made by undercover officers or judicial police officers, unless they agree to testify under their true identity [6, p.659].

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With reference to the legislative framework in Italy and Denmark, we identify Legge, 26 June 1990, no.162 [7] and Law no.748 of 1 December 1989, containing the Danish Code of Criminal Procedure. With the exception of the Danish law, which expressly provides that recourse to covert operations, which could be perceived as an invasion of privacy within the meaning of Article 8 of the Convention, must be necessary and proportionate in relation to the objectives pursued, the conditions of necessity and proportionality are not found in the Italian law in question. In these countries (France and Italy), the use of these techniques must not be subsidiary to the use of traditional methods and must not be conditional on the existence of a pre-existing criminal situation. However, the two laws are more restrictive *ratione materiae*, since they reserve the use of undercover techniques to serious offences prescribed by law, justifying, in part, the principle of proportionality. In all systems, however, the legal basis will have to be sufficiently accessible and to stipulate, with sufficient precision, in which circumstances and under what conditions the authorities may have recourse to this type of technique, i.e. undercover investigations [8, p.380]. In Belgium, undercover operations are regulated by the Law on private investigation methods and other investigation methods of 6 January 2003 [9]. Thus, infiltration is defined, by the Belgian Law on private investigation methods and other methods of investigation of 6 January 2003, as "the fact, for a police officer called an infiltrator, of maintaining, under a false identity, lasting relations with one or more persons concerning whom there are serious indications that they have committed or are about to commit offences within a criminal organisation" [10, p.136].

Belgian author Ch. De Valkeneer has shown [11, p.137-138] that an undercover operation has three essential characteristics: secrecy (the agent disguises his status as a police officer or as a third party working for the police); cunning (the agent constructs a scenario in order to gain the trust of a person with a view to detecting a crime or gathering information about a crime); interaction (it involves direct contact between the agent and the potential perpetrator).

Another Belgian author Maïté de Rue [12, p.1110] noted that the notion of infiltration contains four specific elements: a) infiltration must be carried out by a police officer. These are specially trained and instructed police officers. This is a requirement arising from the highly sensitive nature of infiltration. Exceptionally, however, the law allows, under certain conditions, the use of civilian persons, i.e. "outside the police service" (e.g. "collaborators"), for a short period and if this is absolutely essential to the success of the mission; b) the undercover officer acts

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under a fictitious identity. He disguises his status as a civil servant by pretending to be part of a criminal environment. The police use cunning means to this end; c) it is necessary to establish lasting contact between the police officer and the environment into which he is infiltrating. This means that the infiltrator is not limited to a one-off contact with the person, but in addition, maintains this contact for a certain period of time; d) persons with whom police officers come into contact are suspected of having committed crimes of a certain seriousness. The author Maité de Rue also points out that the legislator refers to offences committed within the framework of a criminal organisation, thus applying the principle of proportionality. In addition, it has been ruled that Belgian law refers only to persons who "commit" or "are about to commit" these offences. The Belgian legislator thus sought to ensure that infiltration could be carried out proportionately in the context of a proactive investigation.

German criminal procedure law provides for several categories of persons who are intended to cooperate with the police in the prevention and detection of crime [13, p.158-160]. Such persons are assigned:

- anonymous police collaborators (Nicht offer operierende Polizei-beamter. NOP);
- undercover investigators (Verdeckte Ermittler.VE);
- agents provocateurs (Agent-provocateur);
- trusted persons (Vertrauenspersonen. VP);
- informants (Informanten).

Since German law regulates the use of agents, informants and other confidants in the investigation of criminal offences, the criminal procedure law provides for the admissibility of data obtained with their assistance as evidence in criminal proceedings. The criminal law Collegium of the Supreme Court of the FRG in its judgments has explained the possibility of hearing the investigating officer, instead of the undercover agent, on the facts and circumstances that have become known to him from the latter's accounts [14, p.106]. According to the recommendations of the Supreme Court of the FRG, in case of necessity the court may appoint a reporting judge, specially empowered to hear the undercover agent and to present the relevant minutes in court. In the explanations of the Supreme Court of the FRG, depositions which would lead to the agent's deception are prohibited.

Conclusions

1. In the area of special investigative techniques, including covered investigations, there are a number of international conventions on preventing and combating

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certain types of crime, such as the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988); the UN Convention for the Suppression of the Financing of Terrorism (1999); the UN Convention against Transnational Organized Crime (2000); Resolution No. 1. 373/2001 of the UN Security Council against Terrorism; UN Convention against Corruption (2003); European Convention on Mutual Assistance in Criminal Matters (1959); European Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990); Council of Europe Criminal Law Convention on Corruption (1999); Council of Europe Convention on Cybercrime (2001); Council of Europe Convention on Action against Trafficking in Human Beings (2005); Recommendations (2005) 10 of the Committee of Ministers of the Council of Europe on special investigative techniques in criminal investigations.

2. The main European instrument devoted to international mutual legal assistance in criminal matters is the European Convention adopted in Strasbourg on 20 April 1959, supplemented by the First Additional Protocol of 17 March 1978 and the Second Additional Protocol of 8 November 2001. A viable act on increasing mutual legal assistance in criminal matters is the Schengen Convention of 19 June 1990.

3. Within the European Union, undercover investigations may be carried out on the basis of an agreement concluded between the competent authorities of the States concerned, whereby they agree, in accordance with their national law, on the duration of the investigation, the practical arrangements for carrying it out and the legal status of the agents involved. Undercover investigations shall be carried out only under the conditions and in accordance with the procedure laid down by the law of the State in whose territory the undercover agents are operating.

4. The Member States of the European Union - France, Italy, Denmark, Belgium and Germany - have regulations corresponding to international conventions on "undercover" techniques used in relation to serious crimes for which traditional methods of investigation have proved ineffective.

5. The legislative framework of the EU countries France, Italy, Belgium and Germany does not expressly provide for conditions of necessity and proportionality for the use of undercover investigators. Although, it should be noted that the relevant legislation in these countries reserves the use of undercover techniques only for serious crimes prescribed by law, justifying, in part, the principle of proportionality. The exception refers only to Danish legislation (Act No 748 of 1 December 1989 on the Code of Criminal Procedure) which expressly provides that recourse to undercover operations, which could be perceived as an invasion of privacy within the meaning of Article 8 of the Convention, must be necessary and proportionate in relation to the objectives pursued by their application.

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6. Special investigative techniques, on the one hand, are vital and effective means of combating serious crimes, and on the other hand, their mode of operation involves interference in the rights of the person protected by law, so that their interdisciplinary research through the prism of constitutional law, criminal law, criminal procedure law, forensics is not only justified but also necessary.

References

- 1) 1a. Păun C. Organised crime or crime organisation, In Annals of the "Alexandru Ioan Cuza" Police Academy, Bucharest, 1993, p. 55.
- 2) 1b. Pop O. General aspects concerning the meaning of organized crime. In: Law and Life no. 6, Ch., 2007, p. 14.
- 3) 1c. Ursu V. Organised crime - Criminological and legal-penal aspects. PhD thesis. Chisinau, 2003. 165 p.
- 4) Law No 118 of 15 December 1992 on Romania's accession to the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
- 5) Law No. 623 of 19 November 2002 on Romania's accession to the 1999 International Convention for the Suppression of the Financing of Terrorism;
- 6) Ratified by Law No 565/2002, published in the Official Gazette No 813/8.11.2006.
- 7) GEO No. 153 of 21 November 2001 for the implementation of United Nations Security Council Resolution No. 1373/2001 on combating international terrorism;
- 8) Ratified by Law No 365/2004, published in M.Of. No 903/5.10.2004;
- 9) Ratified by Law No 914-XV of 15 March 2002. M.O. of the R.M., No. 43-45 of 28 March 2002;
- 10) Ratified by Law No 64/2004// M.Of. of the R.M. No 343 of 20 April 2004;
- 11) Ratified by Law 27/2002. M.Of. no.65 of 30.01.2002;
- 12) Ratified by Law No 300/2006 // M.Of. No 622 of 19 July 2006;
- 13) Ratified by Law No.236/1998. M.Of.nr.492 of 21.12.1998;
- 14) 11. Ratified respectively by Law No.236/1998. M.Of. nr.492 of 21.12.1998 and Law 368/2004 M.Of. nr.913 of 7.10.2004;
- 15) 12. In force since 1 December 2007, according to EU Council Decision No 2007/63/EC of 8.11.2007. Official Journal of the European Union No L 307 of 24 December 2007;
- 16) 13. Vasiescu M. International legal assistance in criminal matters (III). In: Revista de drept penal, year XIX no.2, April June-2012, Bucharest, 2012, p.80-101;
- 17) ECtHR decision of June 15, 1992, Ludi case against Switzerland, in "Revue trimestrielle des droits de l'homme", no. 14/1993, p. 313, observations by Ch. De Valkeneer;
- 18) Demonque Pierre. The policemen. Paris: Ed. La Decouverte/ Maspero, 1993, p.56;
- 19) Koman Mohammed Al. La recherché de la peruve in penal matters. Etude comparate du droit francais et des pays arabes du golfe.These. Lille: Atelier nat. report. Des theses, 1993, p. 168;
- 20) Journal Officiel no. 59 of March 10, 2004;
- 21) Nuttens J.D., La loi portant adaptation de la justice aux évolutions de la criminalité, in "Regards sur l'actualité, Reformes de la justice pénale, La documentation Française" no. 300, April 2004, p. 6-7;
- 22) Nuttens J.D., La loi portant adaptation de la justice aux évolutions de la criminalité, in "Regards sur l'actualité, Reformes de la justice pénale, La documentation Français" no. 300, April 2004, p. 6-7; Francis Le Gunehec, Loi nr.2004-204 du 9 mars 2004 portant adaptation de la justice

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aux évolutions de la criminalité, Deuxième partie: adaptation et diversification des réponse pénales, in "La Semaine juridique" no.15, 7 April 2004, p .659;

23) Gazzetta Ufficiale della Repubblica Italiana, no. 147 del 26 giugno 1990, Series generale;

24) Cohen-Jonathan, La convention européenne des droits de l'homme - Collection de droit positif - Presses Universitaires d'Aix-Marseille, Economica, Paris, 1989, p. 382;

25) Le Moniteur belge of May 12, 2003;

26) Ch. De Valkeneer, Le droit de la police. La loi, l'institution et la société, Brussels, De Boeck, 1991, p.136;

27) Ch. De Valkeneer. I pull them off the shelves. La loi, l'institution et la société, Brussels, De Boeck, 1991, p.137-138;

28) Maité de Rue. La loi du 6 January 2003 concernant les méthodes particulières de recherche et quelques

29) d'enquête: premiers commentaires, in "Revue de droit pénal et de criminologie", no. 9-10/2003, p. 1110;

30) Criminalistics, 1999, no. 1, p. 49-53; Jerome Benedict. Le sort de preuves illicites dance of criminal process. Doctoral theses presented at the Faculty of Law of the University of Lausanne. Lausanne. 1994. p.158-160;

31) Ghesner R., Hertsog U. За фасадом права методы тайной полиции. Moscow, Yurid. lit. 1990, p. 106.