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LEGAL MECHANISM OF USING AGENT/S UNDERCOVER IN CRIME DETECTION OF ORGANIZED CRIME GROUP

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Abstract: *Used by undercover agents in detecting and documenting crimes committed by the so-called. 'Organized crime groups' is a relatively poorly used but extremely effective method. The latter is a combination of criminal procedure and special laws and regulations. The full use of undercover agents requires further enhancement of the legal safeguards for the protection of the employees in question, as well as a clear distinction between acts performed by the employees in question, whether or not in connection with their undercover activities, with or without the implementation of different composition of crime. Attention should be paid to the mechanisms for the selection and joint training of the latter, including through the exchange of experience of EU partner services.*

Keywords: Undercover agents against Organized crime unit

1. Introduction

The investigation of crimes, through the so-called "Undercover agents" is a method that combines complex legal regulations and high efficiency.

Undercover agents are used in all three types of legal systems: Anglo-Saxon, Continental and Mixed, and this non-traditional method is particularly relevant in countries such as the United States, Germany, Britain and Brazil. Using undercover agents, it manages to gather the largest volume and extremely high-quality information, which is subsequently turned into suitable evidence through criminal law methods and techniques.

Undercover agents are usually used to document and intercept the activities of the so-called "Organized criminal groups". Given the latter, it is necessary to outline in general terms the main characteristics of this type of criminal associations. Despite the different legal regulations in the law-making of the individual countries as common features of the so-called "Organized criminal groups" can be deduced the following: 1. presence of a preliminary conspiracy of several persons for commission of criminal acts; 2- strict hierarchical organization and conspiracy. It is these features that are the reason for the low effectiveness of most traditional methods and methods of proving criminal activity compared to the use of undercover agents, who manage to integrate into criminal organizations and thus gather reliable information to be used to intercept crime. the illegal activity of the group.

2. Legal regulations for the use of "undercover agents"

The laws of the countries of the world regulate the status of the undercover agents in different ways. In some cases their activity is regulated in a special separate normative act, and in others it is part of a more general normative act, regulating the methods and means for carrying out

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operative-search activity. In the analysis of the legal regulation of the use of an undercover officer, more attention should be paid to the following points:

2.1. When does the law allow the use of an undercover agents?

The answer to this question finds a different interpretation in the laws of different countries. In some of them (mostly South American countries) the use of an undercover officer is possible only in a limited number of cases to detect a specific type of crime. In most of the countries of the European Union, the use of undercover agents is more extensive in view of the possibility of using the latter in various types of serious crime. According to the legislation of the Republic of Bulgaria, for example, the use of an undercover agent is a type of ‘special intelligence means’ (Art. 2 para. 3 of the Special Intelligence Means Act) and could be used only in detecting and documenting serious intentional crimes. According to Article 93. 7 of the Criminal Code of the Republic of Bulgaria "serious crime" is that for which a sentence of more than 5 years, life imprisonment or life imprisonment without parole.

The latter special intelligence tool is often used in combination with two other special intelligence tools, namely "trust transaction" and "controlled delivery". The use of an undercover agents a type of special intelligence device in Bulgaria is subject to permission and control by a court, and there is a legally defined time interval for implementation. It should be noted that according to Bulgarian law, the use of an undercover agent is applied only when "the necessary data cannot be collected in any other way or their collection is associated with extreme difficulties". The following statistical information also supports this:

- in 2009 a total of 32 operations were carried out by an undercover agent:
- in 2010 their number increases to 36;
- in 2011 there is an increase, with undercover operations reaching 63 per year.

In the following years, the number of operations through an undercover agent remains between 30-40 per year, except for 2013-2014, during which a decline is reported due to structural changes in law enforcement agencies.

2.2. Are employees subject to criminal liability during or in connection with the performance of their activities under cover?

When carrying out their activities undercover, officers often formally commit various crimes in order to successfully integrate into the criminal environment and earn the trust of their sites.

In Latin American countries, for example, the cases in which an undercover officer is released from criminal liability are exhaustive. In Russia, the protection of protected interests is allowed by undercover agents as well as by third-party co-workers outside the law enforcement agencies. The latter is admissible in the presence of the following conditions: the damage is necessary and appropriate; to be performed in the lawful performance of official duties and through it to protect the life, health or other rights of citizens or to protect national security.

In this case, it should be noted that the cited legislation expands its scope by allowing persons who were part of a given criminal group, who did not commit serious crimes and were willing to cooperate with law enforcement agencies not to be prosecuted. Thus, even under these preconditions, the status of these members of the criminal group is to some extent equated to that of undercover agents. For comparison, in the Republic of Bulgaria the same persons who have decided to cooperate can only take advantage of the opportunity to reduce any penalties imposed on them.

In the United States, there are two types of crimes that an undercover agent can commit. The first type are the so-called "Constituent" - this type of criminal acts that aim to create conditions for the employee to penetrate the environment of the criminal group and "auxiliary" - aimed at establishing trust in the employee under cover by members of the criminal group in which he is deployed. Under US law, an undercover agent is prohibited from using or participating in methods of obtaining information other than those established by law. Participation in criminal activities by the undercover agent is allowed only in the presence of strictly defined prerequisites related to preserving the legend of the employee, obtaining information relevant to documenting and intercepting criminal activity, protecting the life and health of the employee or a third party. faces. Under US law, it is up to the prosecutor to decide whether to prosecute the employee in connection with a criminal act he committed during or in connection with his activities undercover. There is a different approach in EU countries. In Germany, an undercover agent is allowed to take part in various criminal offenses, but only for the purpose of gaining the trust of the members of the criminal group in which he is involved, identifying the perpetrators and prosecuting them. It should be noted that the participation of the undercover agent in the alleged crime is subject to prior authorization.

In Italy, the use of an undercover agent is permissible only in cases provided by law. A peculiarity is the fact that for the same acts the undercover agent may or may not be held criminally liable. For example, an undercover agent in an investigation of the illicit arms trade may be a salesman, while in an investigation of a drug group he may not. In order for the unlawful act committed by the employee to be treated as a crime, the following two conditions must be met (Article 51 of the Penal Code of the Italian Republic): extreme necessity of committing a crime and not exceeding the limits of the necessary damage.

In the Republic of Bulgaria (the Law on the State Agency for National Security, the Rules for Application of the Law on the State Agency for National Security, the Law on the Ministry of Interior, the Rules for Application of the Law on the Ministry of Interior) exist the so-called agents on cover. "In essence, this operative-investigative method is “placing employees of the Ministry of Interior and the State Agency for National Security in positions in state institutions, companies or organizations to collect operationally significant information on various criminal activities. Undercover activity is not a special intelligence tool, unlike undercover intelligence. No other identity is created for the persons, but only their affiliation to the respective law enforcement bodies is concealed. During their activities under cover, the employees do not exercise police powers and cannot commit illegal acts in order to protect their cover. The information gathered by them cannot be used directly as evidence in criminal proceedings.

In most countries, an alternative method of obtaining information about the activities of organized criminal groups is the use of operational sources - persons inside or in the environment of the organized criminal group, willing to cooperate with law enforcement agencies. The connection with them is carried out by the so-called operatives of the law enforcement bodies.

The effectiveness of the work of undercover agents depends to a large extent on the way they are introduced to the criminal environment in which they have to operate. In connection with the latter, the employees are created a false identity, supported by the whole set of identity documents. There is a possibility for establishing companies in their name, as well as organizing their way of life, to correspond to their created cover. When analysing the work of undercover agents, attention should be paid to the fact that their remuneration does not differ much from that of law enforcement officers working on the so-called "Obvious state". The latter is a difficulty in the quality selection of persons prepared for undercover work. In addition, the legislation in most European countries, including the Republic of Bulgaria, is such that the activity of the undercover officer is legally limited in some time interval (for the Republic of Bulgaria maximum 6 months), which in most cases is extremely insufficient for quality implementation of tasks, given the fact that the time interval in question includes the period for the deployment of the undercover agent, the performance of the task and any possible smooth removal from his activity undercover. In a global analysis, the positive examples of regulating the activities of undercover officers in the United States should be noted. There, the legislator allows an extremely long period of work undercover (the activity of the undercover agent can last from several months to several years), the latter predisposes to more precise and accurate performance of the task, while ensuring a smooth removal of the agent. There is also specialized psychological assistance after removing the agent from undercover work in order to prevent the possibility of the same, given the long period of work in a criminogenic environment to change his worldview and value system.

3. Conclusions

In conclusion, it can be said that the use of undercover agents requires a lot of resources and strict orgasms, but the same is extremely effective. Proof of the latter is the fact that the number of convictions in investigations involving undercover agents has the highest performance compared to the use of other types of special intelligence tools - about 60 percent.

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