

Investigation Methods of Corruption Cases

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ABSTRACT: The fight against crime is a complex area. We cannot talk about organized crime without talking about corruption offenses, the corruption of police officers, magistrates, civil servants who protect, prevent criminals from various measures that could affect them, which help not to sanction them, aiming to shelter illegal activities committed by them, by the corruption of politicians. Corruption takes place both nationally and internationally, which requires the discovery and sanctioning of the involvement of several jurisdictions, judicial bodies belonging to several states and different laws, transnational corruption being a complex phenomenon and challenging to incriminate and sanction. Due to the complexity of this phenomenon, the investigation of corruption crimes, from a forensic point of view, has special importance. The bodies responsible for combating this scourge must act promptly and with the utmost caution. In order to ensure the correct repression and investigation of corruption offenses, it is necessary to draw special attention to the forensic methodology of investigating acts of corruption.

KEYWORDS: corruption, forensic investigation, special techniques, facts, crimes

Introduction

The Romanian Criminal Code regulates in Title V of the Special Part “Corruption and service offenses”, this being divided into two chapters: Chapter I - “Corruption” (art. 289-294) and Chapter II - “Offenses in public position” (art. 295-309) (See Cristiean 2017, 149-234). Through this structure, a prompt response was given to the critics regarding the normative approach from the old regulation which included in the same chapter the service offenses and the corruption offenses cumulated under the name of “Service offenses or in connection with the service”. The new legislative technique restores the order of social values protected by criminal law, corruption crimes occupying a primary regulatory position taking into account the importance given to the process of combating corruption, both in Romania and at European and international level.

Regarding the notion of corruption, we note that such a definition does not exist at the international level. Nor is the Convention against Corruption published in the Official Gazette no 903 of October 5, 2004 did not formulate such a definition. The Convention does not define corruption in general, but specific forms of its manifestation, such as taking a bribe, giving a bribe, influence peddling, buying influence, embezzlement, abuse of office etc.

Corruption is of many kinds: big corruption, small corruption, active corruption and passive corruption. Within the meaning of this Convention there are many special investigative techniques aimed at obtaining and ensuring the integrity of evidence, such as: technical supervision, physical surveillance and observation/screening, undercover operations, informants, integrity tests, monitoring of financial transactions.

The forensic investigation of corruption requires the use of special measures against the background of the existence of solid indications of committing corruption offenses, in order to gather evidence to establish the criminal liability of the perpetrator. By virtue of the provisions of criminal proceedings, the following are considered special methods of surveillance or investigation: interception of conversations and communications, access to a computer system, video, audio or photography surveillance, location or tracking by technical means, obtaining a list of telephone calls, detention or searching postal items, requesting and obtaining financial transaction data as well as a person’s financial data, using undercover investigators, finding a corruption offense or concluding a convention, supervised delivery, identifying the subscriber, owner or user of a telecommunications or an access point to a computer (Article 139 of the Romanian Criminal Procedure Code).

Technical surveillance

Technical (electronic) surveillance involves the use of electronic means such as video and audio recordings, for collecting information, evidence, surveillance of telephone conversations, electronic correspondence, etc., only after obtaining the reasoned authorization of the judge, at the request of the prosecutor conducting or supervising the criminal investigation, if there are given or solid evidence regarding the preparation or commission of a crime for which the criminal investigation is carried out *ex officio* (Leția 2014, 128). From a technical-forensic point of view, for the interception of communications in the case of corruption offenses, the investigation bodies use a wide range of technical means (systems, devices, equipment), depending on the particularities of the type of communication intercepted.

The interception of communications is implemented at the request of the prosecutor for a period of 30 days based on a warrant issued by the judge of rights and freedoms from the court which would have jurisdiction to judge the case in the first instance or from the corresponding court in its degree in whose constituency is the headquarters of the prosecutor's office of which the prosecutor who made the request belongs. Exceptionally, the technical surveillance may be authorized by the prosecutor, for a maximum period of 48 hours, in case of emergency, for example in the event that, during the technical supervision, it is found that the monitored person uses another telephone. of which the criminal investigation bodies had not been aware until then (Udroiu 2017, 429).

The Romanian criminal procedure law establishes two limitations in technical surveillance, implicitly in the sphere of interception of communications or any type of remote communication. The first of them is signaled in art. 139, para. (3) which considers that the recordings made by the parties or other persons constitute means of proof when they concern their own conversations or communications that they have had with third parties. Any other recordings may constitute evidence if they are not prohibited by law. The second restriction is affirmed by the following paragraph, constituting, at the same time, a guarantee of the right to defense: “the relationship between the lawyer and the person he assists or represents cannot be the object of technical supervision unless there are data that the lawyer commits or prepares to commit an offense among those provided in par. (2). If during or after the execution of the measure it results that the technical surveillance activities also concerned the relations between the lawyer and the suspect or defendant he is defending, the evidence obtained cannot be used in any criminal trial, and will be destroyed immediately by to the prosecutor. The judge who ordered the measure is immediately informed by the prosecutor. When he deems it necessary, the judge orders the lawyer to be informed”.

Regarding the fixing of the results obtained following the activity of interception of communications, art. 143, para. (4) of the Romanian Criminal Procedure Code states that “all intercepted and recorded conversations, communications or conversations, which concern the act that forms the object of the investigation or contribute to the identification or location of persons, are rendered by the prosecutor or the criminal investigation body in minutes in which the mandate issued for their execution, the numbers of the telephone stations, the identification data of the computer systems or the access points, the names of the persons who made the communications, if known, the date and time of each call or communication. The minutes are certified for authenticity by the prosecutor”.

The application of the provisions rendered in the situation of committing corruption crimes and those assimilated to them can lead to their direct documentation and to the gathering of undoubted evidence confirming, corroborated with the other means of proof, the guilt of the perpetrator and all participants.

Physical surveillance and wiring

Physical surveillance consists of the physical pursuit of suspects and their filming.

Undercover operations

They are recognized as extremely effective due to the infiltration of a person into a criminal group or the use of witnesses. The use of undercover investigators and collaborators in the investigation means the use of a person with a different identity than the real one in order to collect data and information on the commission of a crime (Udroiu 2017, 449), in this case one of corruption or a crime assimilated to those of corruption. Article 138, paragraph (10) of the Romanian Criminal Procedure Code provides the same definition of the operation under examination.

Undercover investigators are operative workers working within the judicial police, for example, they may be part of the Special Operations Directorate or the General Anticorruption Directorate. The status of collaborator can be held by any person (whistle blower witnesses, workers from state institutions, including officials suspected of committing corruption offenses, etc.). Collaborators may be used as sources of information in investigations of the same wrongdoing for which undercover investigators may be authorized.

In accordance with article 148, par. (1) of the criminal procedure law, “the use of undercover investigators may be ordered for a period of 60 days by the prosecutor supervising or conducting the criminal investigation”, insofar as certain conditions are met (see Udroiu 2017, 430).

The informants

They are real sources of information and obtaining the necessary evidence for research bodies, and can be recruited even from public institutions. Obtaining the samples can be done through undercover operations, by electronic, technical supervision, by audio-video recordings. In most cases, informants are cited as witnesses in the processes in which they supported the research bodies to gather evidence (Leția 2014, 130-131).

Integrity tests are a method of preventing the commission of crimes of corruption by persons with responsibilities in preventing, combating and sanctioning these acts. One of the ways in which integrity tests materialize is when a civil servant (see Popescu 2018, 249) in the performance of his duties is bribed by an undercover officer to cause him to fail to perform his duties (Leția 2014, 131).

Monitoring financial transactions

The issue of regulation by the provisions of the Romanian Code of Criminal Procedure of the institution of supervision of bank accounts receives special attention, given the current priority of state institutions in combating macroeconomic and financial crime and the need to ensure effective investigative means (Olaru 2014, 122).

Article 138, para. (9) of Romanian Criminal Procedure Code provides that “obtaining data on a person’s financial transactions means operations that ensure knowledge of the content of financial transactions and other operations performed or to be performed through a credit institution or other financial entity, as well as obtaining to a credit institution or other financial institution of documents or information in its possession regarding the transactions or operations of a person”. These activities fall into the category of special investigative methods during the criminal investigation initiated in order to investigate a corruption offense or one assimilated to corruption offenses.

The authorization procedure begins with the issuance of the warrant by the judge of rights and freedoms from the court which would have jurisdiction to judge the case in the first instance or from the corresponding court in its degree in whose district the prosecutor's office is located drafted the proposal, regarding the financial transactions of the perpetrator, suspect, defendant or

of any person who is suspected of carrying out such operations with the perpetrator, suspect or defendant (Art. 146¹ Romanian Criminal Procedure Code).

In urgent cases that could lead to delays in investigations, loss, destruction or alteration of evidence or endangerment of the victim, situations that prevent obtaining the warrant on the main road, respectively its issuance by the judge of rights and freedoms, the prosecutor has the opportunity to obtain data on transactions made or to be made subject to confirmation by the judge of rights and freedoms.

In order not to obstruct the administration of justice, the criminal procedure law establishes the obligation of credit institutions and financial entities to cooperate with the criminal investigation bodies, providing them with the required documents and information, regardless of the nature of the crime investigated, including those of corruption.

Finding a corruption offense or concluding a convention

The finding of a corruption offense can also be achieved through the action or inaction that is similar to a corruption offense, committed for the purpose of gathering evidence in criminal proceedings. The measure is ordered by the prosecutor, ex officio or at the request of the criminal investigation body, by ordinance.

The initial duration of the measure is 60 days, and the total duration of the same person and the same act may not exceed one year. The activity of the person involved in the commission of an offense of corruption or the conclusion of a convention does not constitute a challenge, contravention or offense. Judicial bodies may use or make available to the person enforcing the measure of finding an offense of corruption or concluding a convention any documents or objects necessary for the performance of the authorized activity (Leția 2014, 134).

Conclusions

The topicality of the approached subject has its roots in the urgent need to combat this dangerous reality by adopting fair, stable legislation without gaps that would encourage criminal perseverance. In order to eradicate this phenomenon, it is necessary to manifest such an attitude both globally, on the scale of international organizations, and domestically, at the national level.

Thus, the need for joint action of the state and society in order to adopt radical measures to improve and intensify the activity of the bodies in this area, to know the forensic model of these criminal acts, as well as to create stricter legislation, with a stronger impact in this direction.

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