

# **Methodological Particularities on the Criminal Investigation for Offenses in the Business Field**

Nicoleta-Elena Hegheș

*“Dimitrie Cantemir” Christian University, Faculty of Juridical and Administrative Sciences, Bucharest, Romania,  
nicoleta.heghes@ucdc.ro*

**ABSTRACT:** Financial - banking crime affects fundamental areas of the functioning of society, economics, financial systems, banking, commercial and civil circuits of goods, the labor market, etc. In carrying out the activity, the investigators must know in detail the facts have a thorough knowledge legislative framework in the field and to establish the exact facts, the means used by the perpetrator as well as all the circumstances of the deeds. This can be achieved through a variety of specific activities such as search, obedience perpetrators, witnesses, seizure of documents and objects, disposing of expertise, damage assessment, reconstruction succession of facts, cooperation with the media, international organizations etc. In the field of business crime, the evidence most often administered is the flagrant, the suspects or defendant's' statements, the recording and intercepting of the conversations and the expertise. In essence, any investigation in this area involves the adaptation of principles and the initiation of investigative acts that we will present in this paper. Advanced technology serves both the offender and the investigator for discovering the offenses. There is practically a perpetual struggle between their knowledge, among whom is better prepared and more updated with the new technical discoveries. The subject of study is inexhaustible, and the methods of fighting and investigating are constantly moving, innovation and improvement.

**KEYWORDS:** business field, criminal investigation, expertise, flagrant, recording and interception of calls, suspects and defendants' statements

## **Introduction**

From the point of view of the criminal investigation of this area, the opinions of Prof. Marcel Le Clere and Commissioner Rene Lechat, the reputant of the criminals, have addressed this issue as “business banditism” consisting of „scams, tax fraud, often accompanied by trafficking of influence or corruption officials, delicate scholarship and bank” (Le Clere 1973,101; Stancu 2015, 639). Regardless of the terminology used, it is obvious that the field we are dealing with has a particular impact on all individuals and businesses, such as businesspeople who appear on this field as professionals, as well as all other citizens who can not avoid the condition the consumer being subjected to every day enforcement tracking, as well as violation of the legal norms governing it.

By analogy with other crimes committed intentionally, every fraudulent scam or maneuver is a special case. The imagination of the perpetrators in this field is not limited, manifesting itself in unpredictable fields and directions, thus emphasizing the dangerous nature of the facts in question by affecting many honest businessmen and taxpayers through the damage they bring to the state (Stancu 2015, 651).

In the field of business crime, the evidence most often administered is the flagrant, the suspects or defendants' statements, the recording and intercepting of the conversations, the expertise. In essence, any investigation in this area involves the adaptation of some principles and the initiation of investigative acts which we will set out below.

## **Interception of conversations and communications. Audio and video surveillance**

Criminalization of business crime often involves the use of technical means such as audio-video recordings, voice and speech expertise, graphic expertise, technical expertise, multimedia expertise, etc. Since those committing such crimes communicate coded for their capture, specialists need to intercept, record and decode the conversation.

Intercepting involves the use of technical means through which the contents of the conversations are. Given the fragility of interceptions in terms of the protection of human rights and fundamental freedoms, the legislator provided for their admissibility if national security is at stake.

Recording involves the storage of information on a medium with the ability to be read, modified, transmitted, and so on.

Audio-video recordings must be made in accordance with the rights and freedoms of citizens as provided for in the Romanian Constitution and the European Convention on Human Rights. Per a contrario, it is a touch to privacy. The provisions of the Resolution of the Council of Europe on the fairness of legal proceedings in cases of espionage or disclosure of state secrets should also be observed, according to which the legitimate protection of state secrets must not become a pretext to unduly restrict freedom of expression or information, international scientific cooperation and the work of lawyers and other human rights defenders.

The provisions of art. 29 of the Law no. 255/2013 for the implementation of Law no. 135/2010 on the Code of Criminal Procedure and amending and supplementing normative acts containing criminal procedural provisions does not oblige the secret services or the prosecutor to submit to the file of the court seized with criminal accuracy the documentation on which they relied when they requested and authorized the interception of calls. An important issue in the matter of registrations is the issue of inadmissibility as evidence of registrations made by parties or other persons under conditions other than those covered by Art. 8 of the European Convention on Human Rights as they fall into the generic category of unauthorized registrations.

On the occasion of certification by the Prosecutor of the authenticity of the minutes of the intercepted conversations and conversations intercepted and recorded, as well as in the case of the technical check performed with regard to the equipment or the equipment used for environmental interception in the environment, by a finding technical/scientific expertise or forensic technical / forensic expertise, under the conditions of a Standard Operational Procedure, it is possible to establish the correctness and completeness of the records and the reliability of the devices used simply by confronting the rules and norms of good practice established with the notes in the minutes and the physical examination equipment (Cristescu and Enescu 2013, 23-24).

### **Supervision of bank accounts**

Criminal investigation bodies encounter great difficulties in banking secrecy and excessive money mobility from one name to another from one account to another from one country to another, so it is almost impossible in some cases to locate the deposits belonging to suspects.

Supervision of banking activity, which relies on global, regional, sub regional and bilateral cooperation between judicial authorities, investigative and repression services and financial regulators, is carried out on two levels, namely:

a) Internal - by the National Bank of Romania, in order to protect the interests of the depositors and to ensure the stability and viability of the entire banking system, being the authority responsible for checking and controlling the enforcement of the provisions of Law no 656 of 2002 on the prevention and sanctioning of money laundering, as well as for the introduction of measures to prevent and combat the financing of acts of terrorism.

The control exercised by the National Bank of Romania shall be established in relation to the frequency and degree of detail of the verifications and evaluations, taking into account the principle of proportionality, at least once a year. On-the-spot checks shall be carried out by staff of the National Bank of Romania by financial auditors or experts appointed by it.

Credit institutions must conduct their entire business in accordance with the rules of prudent and sound banking practice. In doing so, it must adopt rigorous administrative and accounting procedures, adequate internal control mechanisms and internal rules for the implementation of international money-laundering sanctions. In this respect, a person with responsibilities in coordinating the implementation of internal rules for the implementation of international sanctions of funds, as well as on the permanent updating of the information held by the institution on international money-laundering regimes, the administration of alerts received from the National Bank of Romania, etc. The reports to the National Bank of Romania shall be transmitted to the Supervisory Board within the National Bank of Romania.

b) External - by the criminal investigation bodies. Criminal investigation bodies carry out activities to ensure the knowledge of the content of financial transactions through a bank or other competent institution. It also carries out activities relating to the obtaining of documents or information in the possession of the bank or financial institution relating to a person's accounts or transactions. If the competent authorities request in writing, credit institutions are required to provide information of a banking secrecy after the commencement of criminal proceedings against a client.

The personal data of people using the banking system is a valuable source of information for banking institutions, but also for those who violate the law. For this reason, the banking system has to provide customers with the confidentiality and security of the information, provided by the holders and used only with their consent.

**Flagrant** is one of the most effective investigative methods used to obtain evidence against criminals in the field of organized crime.

The objectives pursued in the case of flagrant organization are (Medeanu 2006, 34; Olteanu 2003):

- preventing the consumption of illicit activity and diminishing the social danger;
- capture of the perpetrator at the time of committing the act or as soon as possible;
- collecting all evidence attesting the existence of the offense and proving the perpetrator's guilt;
- restoring the previous situation, recovering the damage caused and lifting objects, goods owned or trafficked illegally and taking criminal charges within a time frame as close as possible to the moment of the act.

Being aware of the offense, the investigators interfere with the illegal activity preventing the amplification of the results.

The location and timing of the offense become known from the very beginning of the research. Capturing at least one of the perpetrators can lead to the identification of all participants.

The flagship involves a series of prior measures such as surveillance, interception of telephone conversations, other means of communication, obtaining search warrants as well as finding and retrieving evidence.

In order to organize a flagrant prosecution, the prosecutor competent to conduct criminal prosecution may authorize, by reasoned order, the use of undercover or real-life investigators to discover the facts, identify perpetrators and obtain evidence for a period of up to 60 days, which can be prolonged reasonably.

Minutes concluded by undercover investigators or those with real identity are evidence and can only be used in the criminal case for which authorization was given. There is an opinion that the data and information recorded in the undercover investigator's reports may be used in other cases or in connection with persons other than those covered by the authorization issued by the prosecutor if they are useful and conclusive (Udroiu, Slăvoiu and Predescu 2009, 196).

Also, undercover investigators or real-life investigators can be heard as witnesses. The area of action of the burglary after its execution must be released quickly to prevent the concentration of curious persons, the intervention of other criminals or other negative events.

**Financial investigations** that are considered the cornerstone of research into any case of economic crime must go through several stages (Leția 2014, 179):

- identification of the proceeds/property obtained from the offenses;
- taking measures to seize/confiscate them;
- detection of transnational financial/economic structures/networks and their destruction;
- gathering the necessary information on the procedures used by the offenders;
- their collation and analysis.

Financial investigations should determine what is the profit generated by illegal activities and involves researching different records, bank information that marks the movement of money, etc. therefore, financial investigations must identify and document the movement of money that has served to commit the crime, establish the motives, links between people and places, means of transport and

communication, identify witnesses, suspects and victims. This involves the creation of a mixed, multidisciplinary team consisting of a prosecutor, criminal experts, financial experts, financial analysts. The team aims to conduct investigations, convict criminals and confiscate their assets. Survey versions and expert conclusions should be based on valid information that links new investigative techniques to traditional ones. In order for samples to be used, they must be obtained by legal means.

### **Witness statements**

In the judicial probation, in order to learn the truth, the criminal prosecution bodies always have to establish a multitude of concrete facts, which were done before the notification, and will proceed to a reverse knowledge, from what is known, to what is unknown in the case for instrumentation. On the basis of the primary information resulting from the referral (complaint, denunciation, ex officio referral), the criminal investigating authorities must re-establish with the evidence all the criminal path so that they express the belief that they represent the truth.

By defining the witness, the Romanian criminal procedural law (Art. 114 para. (1) of the Romanian Criminal Procedure Code) indicates that he is the person who has knowledge of facts or factual circumstances constituting evidence in the criminal case. In order to become a witness, it is necessary for such a person to be called, as a witness, by a criminal judicial body. In a criminal case, any natural person, whatever his social situation, age, sex, religion or nationality, may be called as a witness. At the same time, people with certain sensory deficiencies (blind, deaf) or of psychic nature can also be witnesses.

When the criminal investigation body takes the witness statement, it does the provisions of Art. 861 of the Code of Criminal Procedure.

Listening to witnesses is a particularly complex task, which must be conducted in accordance with criminal procedural rules and forensic tactics, requiring the judiciary to have a lot of calm, special attention, perseverance and objectivity in analyzing and assessing the value of the statements.

After performing the training activities in the sense mentioned above, listening to the witness involves the following six main stages, namely: the question stage regarding the person being heard; the stage of communication of rights and obligations; the oath and the solemn declaration stage; the stage of free speech and listening; the stage of asking questions; the state of filing the declaration.

The whistleblower's statement is an important means of proof in the case of economic crimes (the most common being the giving and taking of bribes), which may play a decisive role in the discovery and sanction of offenders. The characteristic of economic crimes is that of the confidentiality and mutual trust of those involved in committing the deed, especially in the context in which the essential value that unites the perpetrators is the economic one, namely the financial resources (Leția 2014, 182).

Witness statements are recorded in written form by the criminal investigation bodies, on a standardized form of the witness, in the single person I, with the questions they have as well as the answers given by the witness to the questions. The statement shall state the time of commencement and the time of the end of the witness's hearing, and whether or not the statement was recorded audio-video. The written statement is signed on each page of the witness and the criminal investigating body that audited the injured person and the lawyer of the injured person, the suspect or defendant, the civil party or the civilly responsible party, if they were present, as well as the interpreter when the statement was taken through an interpreter. If the witness can not or refuses to sign the declaration, the statements corresponding to the situation will be made, specifying the causes justified by the witness in this respect.

The assessment of the testimonies of the witnesses is to establish their sincerity and the truthfulness of the statements made by them, as well as the main purpose of the training and tactics used by the criminal prosecution bodies for listening. Only statements of the denouncing witness will be retained, which do not contradict the rest of the evidence.

### **The search**

The importance of the search is undisputed and the judicial practice is that it shows that in the absence of the search the probation in the case of business crimes would be in a great difficulty, so that the perpetrators could remain unidentified or the acts committed by them could not be proved in scientific way or criminal case could not be clarified in all respects.

In any case, the success of a search depends on how it is prepared. For this purpose, the criminal investigative body should pay special attention to all circumstances that may affect the conduct of the search under the best conditions, such as: the nature of the deed investigated; objects, writings and computer data sought, as well as their characteristics; behavior and anticipated manifestations of the person undergoing the search; the characteristics of the searched place; the date and time frame for the search; search participants and the necessary technical means; the start of the search, the way of entering the search area; how to prevent leaving the search site on the arrival of the team by the persons searched; the measures to be taken to ensure the safety of the persons involved in the search, etc.

The search can be home, body, computer or vehicle. From a tactical point of view, the preparation of the search involves the following steps (Niță 2017, 58-59):

- studying and in-depth knowledge of existing materials in the criminal case so as to ensure a clear picture of the object, the enrollment, the equipment and the computer data that are being sought, as well as their generic characteristics regarding the form, size, color, structure, weight, smell, etc.;
- establishing the purpose of the search based on the necessity and timeliness of its disposal based on the reasonable suspicion of the criminal investigative body about the possibility of discovering evidence and means of evidence useful to the case;
- establishing the methods used to conduct the searches and the necessary technical means, depending on the purpose of the search
- conducting minimum investigations to ensure the knowledge of the place of the search, of the person being searched and of other persons living with him, in order to establish the main elements of tactics needed to be used to ensure the success of the action;
- establishing the date and time of the search, based on rigorous risk analysis regarding the possibility of missing or destroyed items and documents sought, as well as risks related to the integrity of goods and the safety of people present or in the vicinity of the site Hers;
- establishing ways of blocking any possibility of escaping the person searched at entry and surprise by the team conducting the search, as well as blocking its ability to destroy the evidence and trial material for which the search was conducted;
- establishing the means of penetration into the searched place by using any opportunity on the ground, in particular by preparing a scenario to determine the person being searched or another person in that place to open the door or gate at the entrance;
- the determination of the participants in the search, taking into account the nature and extent of the searched areas or areas, the nature of the objects sought, the degree of difficulty involved in their discovery, the data characterizing the personality of the person to be searched, certain tactical considerations about the actual conduct of the search, etc.; it should be noted that the search necessarily involves the presence of the person being searched, even when he is detained or arrested; in the absence of the person being searched, this activity can be carried out in the presence of a representative or a member of the family and, in the absence thereof, of a neighbor who has the capacity to exercise;
- to carry out the legal formalities for ordering the search so as to ensure that the procedure in the Code of Criminal Procedure is followed in the most rigorous manner.

Based on the conclusion, the judge immediately issues the search warrant, which must include, *inter alia*, the period for which the authorization was issued, the place where the search is to be conducted, the name of the person at the place of residence or residence, the purpose for which it was issued, etc. The place where the search is conducted, as well as the persons or objects found can be photographed or recorded audio-video. They are attached to the search report and form an integral part of it.

The record of the search and the removal of the objects and the documents shall be mentioned in terms of its execution, the place, the time and the conditions in which the objects and the documents have been discovered and removed, their enumeration and detailed description, the objects which have not been as well as those that have been left in storage. A copy of the report shall be left to the person under investigation or to the person from whom objects and documents have been removed.

## Conclusion

To investigate and prosecute offenses of the business field, the criminal investigation must carry out a thorough dismantling of the mercenaries used by the perpetrator, which is often at the narrow border between licit and illicit. In the specialized literature it has been stated that a research framework in this field is difficult to stabilize. Business investigation is characterized by complexity and it needs to be done with determination, with much patience, tenacity, perspicacity and courage. None of these attributes should be lacking if it is desired to restore the balance between still insufficient criminal provisions and the ability of offenders in the business world, some with special relationships or having economic, social or political positions.

## References

- Cristescu, D.I. and Enescu, V.C. 2013. Prolegomene privind administrarea și expertizarea probelor multimedia (Prolegomena on administration and expert evaluation of multimedia evidence). Timisoara: Solness Publishing House.
- Le Clere, M. 1973. *Manuel de Police technique*, Editura Police Revue, Paris. In Stancu, E. 2015. *Tratat de criminalistică*, ed. a VI-a. Bucharest: Universul Juridic Publishing House.
- Leția, A.A. 2014. *Investigarea criminalității de afaceri: spălarea banilor; corupția și fraudă fiscală; aspecte teoretice și practice (Investigating business crime: money laundering; corruption and tax fraud; theoretical and practical aspects)*. Bucharest: Universul Juridic Publishing House.
- Medeanu, T.C. 2006. *Flagrantul în traficul de droguri, în Criminalistica (Flagrant in drug trafficking in forensics)* – Magazine for information, documentation and opinion, no. 5/2006, p. 34.
- Niță, N. 2017. *Tactica criminalistică (Forensic tactics)*. Bacău: ProUniversitaria Publishing House.
- Olteanu, G.I. 2003. *Aspecte specifice pe care le îmbracă constatarea infracțiunii flagrante în cadrul investigării infracțiunilor de trafic de droguri (The specific aspects of the flagrant offense in the investigation of drug trafficking offenses)* in Symposium Realities and perspectives in forensics, Bucharest.
- Romanian Criminal Procedure Code. Available at:  
[https://www.google.ro/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwiw0cuo-JXeAhXFVywKHbDGC0QQFjAAegQICRAC&url=http%3A%2F%2Fwww.just.ro%2Fwp-content%2Fuploads%2F2016%2F01%2FNoul-cod-procedura-penala-EN.doc&usg=AOvVaw1IcdJjStcO\\_2bVSwbLPadb](https://www.google.ro/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwiw0cuo-JXeAhXFVywKHbDGC0QQFjAAegQICRAC&url=http%3A%2F%2Fwww.just.ro%2Fwp-content%2Fuploads%2F2016%2F01%2FNoul-cod-procedura-penala-EN.doc&usg=AOvVaw1IcdJjStcO_2bVSwbLPadb)
- Udroiu, M.; Slăvoiu, R. and Predescu, O. 2009. *Tehnici speciale de investigare în justiția penală (Special investigative techniques in criminal justice)*. Bucharest: C.H. Beck, Publishing House.