

Criteria for Appointing an Undercover Investigator to Obtain Evidence and Information in a Criminal Case

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ABSTRACT: In this article we aimed to expose the traits and qualities that an undercover investigator should have in order to be able to carry out his mission in good conditions, without the risk of uncovering the occult operation and without endangering his own life or physical or mental integrity. The use of undercover investigators may involve interactions with different individuals over a shorter or longer period of time, which may be a single contact or multiple meetings in which a connection is established between the person being investigated and the undercover investigator. They must show special social skills, namely to be able to adapt their behavior depending on the situation in which they are in order to give credibility to the character they portray, but also to relate to the people targeted by the operation in such a way that it can obtain evidence and information relevant to the criminal case in which it is used. Due to the importance of the activity carried out by undercover investigators, the risk to life and physical and mental integrity to which they may be subjected, it is imperative that their election within the framework of undercover operations be carried out with maximum skill and responsibility by persons qualified in this sense.

KEYWORDS: undercover investigators, undercover investigator qualities, the role of the undercover investigator, special investigative means

Introduction

The development of technology and globalization have contributed to the diversification of the modes of operation of criminals in such a way that it is increasingly difficult to discover both the crimes and the perpetrators, to the expansion of their area of action and to the amplification of crime, the states having to adapt permanently to the new social realities and to adopt the necessary measures to counteract the criminal phenomenon, which is becoming more and more advanced in terms of the methods used and the hiding of the traces of the perpetrators.

Thus, the evolution of crime has produced a change (in Europe and other parts of the world) in the way of investigating and discovering crimes, with a much greater emphasis on proactive, intelligence-based investigations, with the special use of informants (“sources”), undercover agents and other covert techniques such as environmental surveillance, communications interception and controlled delivery.

The use of undercover investigators, as a special research method, is a modern and effective tool in combating the phenomenon of crime, thus being able to obtain evidence that could be more difficult to fight for the defense since the persons targeted by these criminal investigation measures are not alerted regarding the conduct of a criminal investigation against them so that their behavior during the undercover operation is not extremely cautious.

It was shown in the doctrine that “the emergence of the legal framework that regulates the activity of undercover investigators was unanimously determined by the needs of the fight against atypical forms of crime, which carry out their activity in an organized and “hermetic” manner, so that the activity of proving criminal activities by normal methods becomes particularly difficult, if not impossible” (Petre and Trif 2016, 88).

The role of undercover investigators in criminal investigations

In Romanian law, the purpose of using undercover investigators is to obtain evidence and information during the criminal investigation, all of which are made available to the investigative bodies. The measure is ordered by the prosecutor, *ex officio* or at the request of the criminal investigation body, by ordinance, which must include the indication of the activities that the undercover investigator is authorized to carry out, the period for which the measure was authorized, as well as the identity assigned to the undercover investigator.

Specifically, the undercover investigator will be able to contribute to establishing whether the crime of which a person or an organized criminal group is suspected has been committed, is ongoing or in the preparatory phase, the identification of the members of the criminal group, the identification of accomplices, witnesses, injured persons, identifying the places where the goods from the crimes are hidden, identifying the places where the victims of the crimes are, specifying some favorable moments for carrying out searches, arrests, red-handed arrests, etc.

In order to obtain this information, the undercover investigator must infiltrate the criminal environment, such as within an organized criminal group, come into contact with its members, gain their trust and act apparently in the interests of the group, and, in parallel, to obtain the data and information necessary to identify the members of the group, the organizational structure as well as the discovery of the mode of operation, the facts committed by them, the place where the proceeds of the crime are located, etc.

The use of undercover investigators may involve interactions with different individuals over a shorter or longer period of time, which may be a single contact or multiple meetings in which a connection is established between the person being investigated and the undercover investigator.

Certain contacts may be purely business-related, such as in drug or arms trafficking investigations, where the undercover investigator may pretend to intend to purchase the trafficked goods. They do not involve the formation of an intimate bond between the undercover investigator and the individuals targeted by the operation.

In cases where an undercover agent befriends a suspect in order to obtain information about his involvement in a serious crime (for example, a murder), he must sometimes establish a rather intense personal and emotional connection with the suspect (Kruisbergen 2017, 124).

We can imagine a situation where the murder suspect is in custody and the undercover investigator has to play the role of a cellmate who shares sensitive details about him, such as those related to serious crimes committed, in order to win the trust and friendship of the suspect and motivate him to confess to the committed acts and possibly useful details for the criminal investigation bodies for the further investigation of the murder.

The operations carried out by the undercover investigator can often be accompanied by technical surveillance activities (for example, audio/video recording in the ambient environment of meetings between the agent and the person targeted by the undercover operation, taking photographs in private spaces, placing GPS tracking systems on vehicles, access to a computer system, copying data from an accessed computer system, etc.).

The qualities required of the undercover investigator for his assignment in a criminal investigation

From the nature of the activities that an undercover investigator must perform, it can be noted that, for the occult operation to run smoothly without the risk of its unraveling, the investigator must possess a number of qualities.

They must show special social skills, namely to be able to adapt their behavior depending on the situation in which they are in order to give credibility to the character they

portray, but also to relate to the people targeted by the operation in a such a way that it can obtain evidence and information relevant to the criminal case in which it is used.

Thus, the investigator must first of all be a person with a high level of intelligence, be spontaneous, well oriented in time and space, flexible, sociable, emotionally intelligent, attentive to details, balanced, and proactive.

Although the investigator can empathize to a certain extent with the suspected person, for example, if he has children, he must maintain his objectivity in carrying out the mission he was entrusted with, having a high civic sense to contribute to combating the criminal phenomenon.

At the same time, he must be adequately trained in the use of audio-video recording technical means and have the knowledge required by the specifics of the activities he must carry out. Regarding this last aspect, he justifies himself by the fact that an investigator must give credibility to his character through facts, gestures and the vocabulary used, which must be consistent so that there are no suspicions on the part of the people targeted by the undercover operation, some among them being particularly intelligent and cautious, being able to notice in this way any detail related to the undercover investigator likely to arouse suspicion.

For example, an undercover investigator pretending to be a former drug user must know the slang used for the categories of drugs his character has consumed, as well as the method of administration: oral, inhaled, injected, etc., so that when he negotiates with drug traffickers, he does not raise suspicions that the drugs are not actually being bought for the stated purpose.

It has been indicated in foreign doctrine that any undercover assignment is a stressor regardless of the person and qualifications of the undercover investigator. To reduce the stress of the undercover operation, superiors should not assign investigators who's cultural, ethnic, or geographic background differs substantially from that of the person they are portraying (Band and Sheenan 1999, 3).

The same authors indicated a list of ten traits that an undercover investigator should possess (Band and Sheenan 1999, 4):

- they are seasoned investigators, who volunteer to work undercover because they believe the techniques work, not because they are looking for personal glory. Additionally, these individuals are neither running toward undercover work, believing it is something it is not, nor running away from an unpleasant work assignment or life situation, believing they can find refuge in undercover work;

- they have demonstrated perseverance and resourcefulness in the face of complex matters;

- they are comfortable and capable of acting within their agencies' undercover policies, procedures and guidelines;

- they remain capable of acting on well-rehearsed mental strategies and coping skills for operating in hostile environments while maintaining firm bonds and commitments to the missions of their law enforcement agencies;

- they possess moral and ethical values that dovetail with their undercover missions. Officers operating in other than their true identities must conduct themselves appropriately and lawfully. The lawful use of the undercover investigative technique represents a sacred trust between law enforcement agencies and the people of a free society. If law enforcement agencies violate this trust by engaging in inappropriate undercover conduct, the public could stop supporting the use of this important technique;

- they are highly proficient and comfortable at portraying identified roles;

- they demonstrate high levels of self-confidence and self-perception of effectiveness operating against specific criminal elements;

- they are decisive people, flexible enough to work independently, yet extraordinarily capable of being team players when called upon to do so;
- they are not situationally distracted with personal life stressors and vulnerable to anxiety and depression;
- they have personality attributes to facilitate interaction with suspects.

Due to the importance of the activity carried out by undercover investigators, the risk to life and physical and mental integrity to which they may be subjected, it is imperative that their election within the framework of undercover operations be carried out with maximum skill and responsibility by persons qualified in this sense.

Depending on the specifics of the operation carried out, the person in charge of appointing the undercover investigator must look for an agent who meets as many of the qualities necessary for the specific mission to be carried out so that its purpose is fulfilled as much as possible, and the risks for the person of the undercover investigator to be minimized as much as possible.

For the designation of police officers who will work undercover, thorough recruitment, selection and training measures are necessary, taking into account the degree of professional training, honesty, motivation, negotiation skills, willingness to work in a team, resistance to stress (Buzatu 2012, 294).

We believe that the option of the undercover investigator whether or not he wants to be assigned to that operation should also be taken into account, since his reluctance to carry out the operation, regardless of the reason, could affect his effectiveness in the undercover mission.

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