

# Surveillance or Investigation Special Methods

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**ABSTRACT:** Special methods are essential in the investigation of crimes such as terrorism, corruption, organized crime, or drug trafficking. These techniques allow the collection of otherwise unobtainable evidence and contribute to establishing the truth. By using these methods, investigators can quickly prevent and counter illegal activities. These methods are used for particularly serious crimes where traditional methods of investigation are insufficient. This paper highlights the importance of a fair and transparent application of special investigative techniques to strengthen public confidence in the justice system while also protecting the rights of individuals.

**KEYWORDS:** surveillance, investigation, special methods, Romanian

## Concept and regulation

Article 138 of the Romanian regulates special methods of surveillance or investigation, which are essential tools in the investigation of complex and serious crimes. These methods were introduced to ensure a balance between the need to fight crime and respect for the fundamental rights of the individuals. In the analysis of this article, we will highlight the main aspects and their importance. According to the above-mentioned article, the following constitute special methods of surveillance or investigation:

“(a) the interception of communications or any type of remote communication;  
(b) access to a computer system;  
(c) video, audio or photographic surveillance;  
(d) localization or tracking by technical means;  
(e) obtaining data concerning a person’s financial transactions;  
(f) seizing, handing over or searching postal items;  
(g) use of undercover investigators and collaborators;  
(h) authorized participation in certain activities;  
(i) controlled delivery;  
(j) obtaining data generated or processed by providers of public electronic communications networks or providers of publicly available electronic communications services, other than the content of communications, retained by them pursuant to the special law on the retention of data generated or processed by providers of public electronic communications networks and providers of publicly available electronic communications services.”

In the following paragraphs of art. 138 of the Cpp, the definitions are as follows:

“(2) The interception of communications or any type of communication shall mean the interception, access, monitoring, collection or recording of communications made by telephone, computer system or any other means of communication.

(3) Access to a computer system means intrusion into a computer system or computer data storage medium either directly or remotely by means of specialized software or a network for the purpose of identifying evidence.

(4) A computer system shall mean any device or set of inter-connected or functionally related devices, one or more of which provide automatic data processing by means of a computer program.

(5) Computer data means any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program capable of causing a computer system to perform a function.

(6) Video, audio or photographic surveillance means photographing persons, observing or recording their conversations, movements or other activities.

(7) Locating or tracking by technical means refers to the use of devices that determine the whereabouts of the person or the object to which they are attached.

(8) Search of postal items means the examination, by physical or technical means, of letters, other postal items or objects transmitted by any other means.

(9) Obtaining financial transaction data of a person shall mean operations for ascertaining the substance of financial transactions and other operations carried out or to be carried out through a credit institution or other financial entity, as well as obtaining from a credit institution or other financial entity records or information in its possession relating to transactions or operations of a person.

(10) The use of undercover investigators and collaborators shall mean the use of a person under a false identity for the purpose of obtaining data and information relating to the commission of a criminal offense.

(11) Authorized participation in certain activities shall mean the commission of an act similar to the objective side of a corruption offence, the carrying out of transactions, operations or any kind of dealings concerning property or a person suspected of being missing, a victim of trafficking in human beings or a victim of kidnapping, the carrying out of drug operations, as well as the provision of a service, carried out with the authorization of the competent judicial body, for the purpose of gathering evidence.

(12) Controlled delivery means a surveillance and search technique whereby goods suspected of being illicitly possessed or obtained are allowed to enter, transit through or leave the territory of the country, under the supervision or with the authorization of the competent authorities, for the purpose of investigating a crime or identifying persons involved in the commission of a crime.

(13) Technical surveillance shall mean the use of one of the methods referred to in paragraph. (1) lit. a)-e)".

### **Technical surveillance**

Thus, technical surveillance means the use of one of the following methods: interception of communications or any type of remote communication; access to a computer system; video, audio or photographic surveillance; and localization or tracking by technical means. According to art. 139 of the Romanian Procedure Code "(1) Technical surveillance shall be ordered by the judge of rights and freedoms when the following conditions are cumulatively met:

(a) there is a reasonable suspicion of the preparation or commission of an offense referred to in para. (2);

(b) the measure is proportionate to the restriction of fundamental rights and freedoms, given the particularities of the case, the importance of the information or evidence to be obtained or the seriousness of the offense;

(c) the evidence could not be obtained in any other way or the obtaining of the evidence would give rise to particular difficulties likely to prejudice the investigation or there is a danger to the safety of persons or to the security of valuable property.

(2) Technical surveillance may be ordered in the case of offenses against national security provided for by the Criminal Code and special laws, as well as in the case of offenses of drug trafficking, arms trafficking, trafficking in human beings, acts of terrorism, money laundering, counterfeiting of currency or other valuables, counterfeiting of electronic payment instruments, offenses against property, extortion, rape, deprivation of liberty, tax evasion, in the case of corruption offenses and offenses assimilated to corruption offenses, offenses against the financial

interests of the European Union, offenses committed by means of computer systems or electronic communications or other offenses for which the law provides for imprisonment of 5 years or more.

(3) The recordings referred to in this Chapter, made by the parties or other persons, shall constitute evidence when they relate to their own conversations or communications with third parties. Any other recordings may constitute evidence unless prohibited by law.

(4) The relationship between the lawyer and the person he assists or represents may not be subject to technical surveillance unless there is evidence that the lawyer is committing or preparing to commit an offense referred to in paragraph. (2). If, during or after the execution of the measure, it emerges that the activities of technical surveillance have also covered the relationship between the lawyer and the suspect or defendant whom he is defending, the evidence obtained may not be used in any criminal proceedings and shall be immediately destroyed by the prosecutor. The prosecutor shall immediately inform the judge who ordered the measure. Where he considers it necessary, the judge shall order the lawyer to be informed.”

These methods allow prosecutors to overcome the difficulties posed by the sophisticated ways in which serious crimes are committed, but at the same time require strict respect for fundamental rights.

Technical surveillance may be ordered in the course of criminal proceedings, for a maximum of 30 days, at the request of the prosecutor, by the judge of rights and freedoms of the court having jurisdiction to hear the case at first instance or of the court of the corresponding level of the court within whose district the prosecutor's office of the prosecutor who made the request is based. The request for technical supervision shall be decided the same day in council chambers without the parties being summoned. The participation of the public prosecutor shall be mandatory. If the judge of rights and freedoms finds that the application is well founded, he shall, by a decision, grant the prosecutor's request and immediately issue the warrant for technical surveillance (Duvac 2024, 229). The decision of the judge of rights and freedoms on the technical surveillance measures is not subject to challenge. The absence of an appeal is determined by the necessity to preserve the confidentiality of the enforcement of the technical supervision measure, without which it would be impossible to obtain the data absolutely necessary in the criminal investigation.

According to Art. 141 para. 1, the public prosecutor may authorize, for a maximum of 48 hours, technical surveillance measures when: a) there is urgency, and obtaining the technical surveillance warrant under Article 140 would lead to a substantial delay in the investigation, loss, alteration or destruction of evidence or would endanger the safety of the injured person, the witness or their family members; and b) the conditions set out in Article 139 para. (1) and (2)”. As provided in Art. 142, the prosecutor shall carry out the technical surveillance or may order it to be carried out by the criminal investigation body or by specialized police officers or other specialized state bodies. Selecting and transcribing the intercepted conversations is an activity of execution of the technical surveillance warrant. After termination of the supervision measure, the prosecutor informs the judge of rights and freedoms about the activities carried out.

Article 144 of the provides in para. 1 that “the technical supervision warrant may be extended, for duly justified reasons, by the judge of rights and freedoms of the competent court, at the reasoned request of the prosecutor, if the conditions set out in Article 139 are met, each extension not exceeding 30 days”.

Article 145 para. (1) provides that after the termination of the measure of technical supervision, the prosecutor shall inform in writing each subject of a warrant of the measure of technical supervision that has been taken in respect of him or her within 10 days at the latest. (2) After being informed, the supervised person shall have the right to acquaint himself, upon request, with the content of the minutes recording the technical surveillance activities carried out. The public prosecutor must also ensure, on request, the hearing of conversations, communications or conversations or the viewing of images resulting from the technical surveillance activity.

*Interception of communications or any type of remote communication.* This is a probative procedure involving the monitoring of telephone calls, e-mails or other forms of electronic

communication, such as those made through applications such as WhatsApp, telegram, viber, messenger, skype. It is used to uncover and prevent illegal actions such as fraud, drug trafficking, etc. It requires a judicial authorization and the interception is time-limited and justified only in particularly serious cases. This means that the request made by the prosecutor to the judge of rights and freedoms must be properly justified.

*Access to a computer system.* Allows investigation of the contents of computers, servers or devices connected to the internet. It is essential in cases of cybercrime, computer espionage or computer fraud. There are risks related to the protection of personal data and privacy that need to be considered.

*Video, audio or photo surveillance.* Involves the installation of surveillance equipment in private or public premises. It helps to obtain visual and audio evidence in real time and is frequently used in cases of serious crime, such as corruption or organized theft. It requires prior authorization and the necessity and proportionality of the measure must be justified.

*Location or tracking by technical means.* Includes GPS devices or other technical means to monitor a person's movements. It is essential for tracking suspects who are fleeing from justice or for monitoring illegal transportation, such as illegal migrant smuggling or human trafficking.

*Obtaining data on a person's financial transactions.* Access to banking information, including transactions and account history. It is indispensable in the fight against money laundering, tax evasion or any form of tax fraud. The law imposes strict measures to protect financial data and sanctions for misuse. Obtaining data on financial transactions carried out may be ordered by the judge of rights and freedoms of the court having jurisdiction to hear the case at first instance or the corresponding court of the level of the court within whose district the prosecutor's office of the prosecutor who made the proposal is headquartered.

*Seizure, surrender or search of postal items.* Provides the possibility of checking suspicious mail. Allows interception of parcels or mail containing illegal materials such as drugs or forged documents. It is frequently used in drug trafficking cases. The need to respect the confidentiality of correspondence requires strict judicial control. It is prohibited to detain, hand over and search correspondence or postal items sent or received between a lawyer and a suspect, defendant or any other person he is defending, unless there is evidence that the lawyer is committing or preparing to commit an offense referred to in Article 139 para. 2 of the Romanian Criminal Code.

*Use of undercover investigators and collaborators.* Allows investigators to infiltrate criminal groups in order to obtain inside information. Undercover investigators are operational workers within the criminal investigation police. It is indispensable in investigating organized crime networks, human trafficking or high-level corruption. It requires careful planning to avoid compromising the investigation. Authorization to use undercover investigators can be ordered by the supervising or conducting prosecutor for a maximum of 60 days. If the prosecutor considers that it is necessary for the undercover investigator to be able to use technical devices to obtain photographs or audio and video recordings, he shall request the judge of rights and freedoms to issue a warrant for technical surveillance.

*Authorized participation in certain activities.* Allows investigators to participate in otherwise illegal activities in order to gain the trust of suspects. It is used to disrupt drug trafficking, human trafficking or other organized criminal networks. The measure is ordered by the public prosecutor, ex officio or at the request of the criminal investigation body, by order. Authorized activities may be carried out by a criminal investigation body, a real-identity investigator, an undercover investigator or a collaborator.

*Surveilled delivery.* Involves monitoring suspicious shipments, allowing them to reach their destination to identify the entire crime chain. It helps to capture major suspects and seize illegal goods. This special probation technique may be authorized by order of the prosecutor supervising or conducting the criminal prosecution at the request of the competent institutions or bodies. This probatory procedure is implemented by the police or other competent authority (e.g. joint investigation teams, customs authority, police, border police authorities). At the end of the

controlled delivery on Romanian territory, these authorities are under an obligation to draw up a report on the activities carried out and submit it to the prosecutor. The manner of implementation of the controlled delivery is determined, coordinated and controlled by the prosecutor (Buzatu 2015, 188-189).

*Obtaining data generated or processed by electronic communication providers.* It includes call metadata (location, duration, identity of callers) and other data collected by telecommunication providers. It is crucial for investigating suspicious activity and establishing links between criminals. Criminal prosecution authorities, with prior authorization of the judge of rights and freedoms, can request traffic and location data processed by providers of publicly available electronic communication services.

These methods are indispensable in investigating crimes that jeopardize public safety, such as terrorism, organized crime, corruption or drug trafficking. The evidence obtained through these methods has a high probative value, providing the courts with concrete elements to solve cases. The above methods respond to the challenges of contemporary crime, which uses advanced technology to avoid detection. Despite their effectiveness, these methods must be used with strict respect for fundamental rights such as the right to privacy and confidentiality of communications. While these methods are effective, they require careful and proportionate application under the supervision of judicial authorities to ensure respect for fundamental rights and the rule of law.

## Conclusion

The special methods of surveillance and investigation provided for in Article 138 of the Code of Criminal Procedure are vital tools for the investigation of serious crimes, but their use must respect the principles of legality, necessity and proportionality. Their implementation under strict judicial supervision ensures a balance between the public interest and the protection of the fundamental rights of the individual.

While special methods are indispensable for public safety, they should be used sparingly and only in well-justified cases. In a digital age, criminals use sophisticated resources. Special methods are adapted to face new technological challenges. There is a risk that these methods could be misused, which would lead to violation of citizens' rights. For this reason, rigorous judicial control is essential to ensure the fairness of the procedure as a whole.

In many cases, the use of special methods makes it possible to prevent criminal actions such as terrorist attacks or organized criminal activities. Video surveillance or interceptions can provide clear evidence to support the criminal case. A fair and transparent application of special methods can strengthen confidence in the justice system and make the administration of justice more efficient, while rigorously respecting the principle of proportionality (Bitanga, Franguloiu, and Hermosilla 2018, 37) and the fundamental principles of the criminal process.

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