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INTEGRATION OF INVESTIGATION AND INTELLIGENCE ACTIVITIES – TOWARDS EFFECTIVENESS OF INVESTIGATION

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Recenzavo Lietuvos teisės universiteto mokslo prorektorius profesorius dr. ***Vidmantas Egidijus Kurapka*** *ir šio Universiteto Teisės fakulteto Kriminalistikos katedros vedėjas profesorius dr.* ***Hendrik Malevski***

Summary

The experience gained in process of investigation of organized criminality in Latvia testifies, the fact that it is hardly possible to prove the guilt and we can seldom succeed by collecting evidence in the traditional, century old manner – using such legal investigative activities as interrogation, confronting, search, etc.

The draft supplement to the Law on Criminal Procedure in force has been worked out on the basis of this research.

The special procedure of investigation activities, foreseen in the mentioned chapter is expressed in three ways: Firstly, the investigator completes the investigative activities mentioned in this chapter only according to the order of specially authorised prosecutor or judge.

Secondly, the person, against whom or whose activities are investigated, is not informed about the investigation at once and so that he/she cannot interfere and affect the process of collecting evidence. They get to know about the fact and the results of activities after completion of pre-trial investigation when they are introduced with the materials of the case.

Thirdly, the above-mentioned activities are charged with the police or other authorized law enforcement institutions

The worked out supplement to the Law on Criminal Procedure provides nine investigative activities to be completed according to special procedure. They include: control of all types of legal correspondence, control of all types of communication, audio control of the place or the person, video control of the place, observation and surveillance of the person, observation of the object or the place, the investigative experiment completed according to special procedure, the process of obtaining patterns for comparative investigation and control of the criminal activities.

In my report at one of your last conferences at the end of the nineties I tried to prove that in the present stage of development the possibilities of law enforcement institutions are falling behind and it is obvious that they do not correspond to the possibilities of organized criminal structures and therefore the effectiveness of the fight against them is very low.

The experience of the investigation of the crimes committed by the organized criminal structures in Latvia proves that it is almost impossible to prove the guilt of the involved persons, and of course the leaders, using only the traditional methods of investigation. The use of such investigative activities as interrogation, confronting, search, ect in the century old manner is successful very seldom.

The main board of the Criminal Police of Latvia in 1998–1999 ordered the Department of Criminalistics of the Police Academy of Latvia to investigate this problem and to try to find a solution.

Therefore in order “not to invent a bicycle” we started with the deep research of the experiences of work in the same sphere in different European countries, in the beginning we asked for the publications and the materials published there, later – the research was accomplished in Paris and Visbaden at the Board of Federal Criminal Police of Germany.

In both countries the problem was discussed in detail not only with the employers of Criminal police but also with prosecutors and judges.

The first decision we unanimously arrived at was: in our times with up-to-date criminal qualification and the level of organization of criminal groups and associations it is almost impossible to collect enough evidence using only the mentioned traditional investigative activities. In Latvia, we lack of technical equipment and professional training of police and the situation is the same in highly developed countries. This was stated after study of materials, it was accepted by the specialists, we talked with.

Therefore we concluded that at the beginning of the 90ies in law on criminal procedure of both countries involved in the research and making conclusions based upon the materials from other countries (Netherlands, Belgium, Sweden, etc.) there were foreseen a number of new, as we called them, “special” investigation activities. They are analogous to the mentioned ones in our law on secret intelligence activities and they are carried out using secret activities or methods, audio control, video control. The only difference is that these activities are carried out without the decision of police but according to prosecutors’ or judges’ request – but the most important is that the information obtained is admitted and used as the evidence. The importance and effectiveness of introduced investigative activities testifies that all questioned French judges, independently from each other, declared that not less than 30 percent of evidence they use in their sentences are obtained with the help of special investigative activities. It is possible to conclude that their invention has raised the effectiveness of the fight against criminality up to 1/3.

The conclusions of the research were described in detail in a series of articles in the legal magazines of Latvia and the report was delivered at the conference, which was held within the frame of the annual congress of the Society of Lawyers of Latvia. The monograph “Special Investigation Activities” is published, as well.

The research resulted in the draft supplementary chapter to the existing Criminal Procedure Code of Latvia in force.

“Investigation activities performed according to the special procedure” contained 22 articles. It was supported by the General Prosecutors Office, the High Court, Ministry of Interior and Ministry of Justice, supported it after detailed discussions at the Saema (Parliament) deputy commissions on Defence and Home Affairs of Latvia and after a few specifications added by the working team on the New Criminal Procedure Law at the Ministry of Justice, it was accepted at the plenary of Saema in the first reading in December 2001.

It is a pity, that after discussion of our project at the plenary in the second reading after the request of the deputies – orthodox lawyers and advocates the project was rejected.

At the moment of writing this report (1April 2003) our suggestions are completely included in the draft of new criminal procedure law, that is approved by the Commission of the Cabinet of Ministers and after the approval of Parliament would be sent for approval to the newly elected Saema.

The specific procedure, its difference from other activities is regulated by the Criminal Procedure Code in force, foreseen in the worked out project, is expressed in three ways.

Firstly, all the investigation activities are performed according to the decision of the person, who is responsible for the case under investigation. The activities foreseen in the project will refer only to the specially delegated authority of a prosecutor or a judge (depending upon the respective article). In reality such decisions can be taken according to the request of the investigator. But there are additional guarantees provided to prove the decision, of final handover of the case to the authority independent from the investigation. The way the problem on investigation activities is posed in the draft law is the following, the decision on performance of investigation activities according to special procedure can be

accepted only when it is impossible or it is significantly difficult to obtain the necessary evidence for the case.

Secondly, as the difference from other investigation activities, when the person against who these activities are performed gets to know about them and the results at once. The fact of performance and the results are not revealed to the involved persons. They do not know about the performed activities during the process and therefore they cannot react and influence the information to be received. They will get to know about the fact and the results of performed activities only when the investigation decides it is purposeful but before the end of the pre-trial investigation when they are acquainted with the materials of the case.

The third difference. The absolute majority of investigation activities are performed by the person investigating the case and very rarely under delegating the authority to other police authorities or prosecution.

The overlooked special activities practically all are delegated to the respective police structures or other authorized institutions. These direct performers of investigation present the detailed account on the procedure and the results of the activities with the added video, audio and other materials.

On the basis of this account and materials the investigation draws a report about investigation activities in which only evidence of importance to the case under investigation are mentioned, they are supplemented with the respective fragments of video and audio recordings, mentioning the evidential facts.

The accounts with the materials not added to the case, are kept either with the specially authorized prosecutor or judge or with the institution – performer of the activities till the sentence comes into force.

The aim of such procedure is to prevent unneeded for evidence, revealing of privacy, unavoidably fixed during the pursuit, audio control and other activities. At the same time there is envisaged the procedure of acquainting the suspect and the defence with the materials not added to the case if the authorities consider it acceptable.

There are foreseen nine investigation activities performed according to the specific order in the worked out Supplement to the Law on Criminal Procedure They are: control of all means of legal correspondence, control of all means of communication, audio control of the place or the person, video control of the place, in the investigation experiment performed as a specific procedure obtained with the help of the pattern of specific procedure for comparative investigation and control of criminal activities.

Obviously there is no need to explain the essence and aims of the first six mentioned activities. There are used different terms to denote these activities, the readers and the audience hopefully would not find it difficult to understand and to discriminate them from the analogous intelligence methods in the Law on secret intelligence Activity.

As to terminological differences between analogous activities in the Law on secret intelligence Activity and in the Law on Criminal Procedure, they are made on purpose. After detailed discussions at the meeting of the working team, after accepting the discussed supplements to the Law on Criminal Procedure and their introduction into practice, the offered new investigation activities, intelligence activities with the aim not connected with proving (prevention, search of the initial intelligence important information, etc) would proceed.

Therefore it is necessary to ensure the possibility in each case to clearly define what is performed or was performed through investigation activities according to specific procedure or intelligence method is used, this can be clearly seen when you define each of these activities using different terms.

The essence of the last three mentioned activities is the following. The investigation experiment performed according to specific procedure is carried out to test, how in a particular situation, criminal intent can be promoted, preparation of crime, criminal act, the person, about whom there is information connected with the crime preparation, will react.

There is stressed in the law that it is prohibited to influence the choice of the person or to encourage the criminal act using force, threats or blackmail. The example of the

experiment could be delivering of bribe asked, to the authority for the positive decision of the question or buying drugs from the drug-dealer, ending with his detention.

In its turn obtaining patterns for comparative investigation according to the specific procedure is performed in cases when in the interest of investigation it is unreasonable to inform the person whose patterns of handwriting, voice, fingerprints etc. are taken, about the investigation and to prevent his/her reaction or hiding.

The last foreseen in the law – control of the criminal activities – in reality it is not a separate activity, it is a complex of those mentioned before. The performance of them is foreseen in cases when only one episode of criminal activity is defined or there is no information about other members of criminal group but his/ her detention or open investigation or detention of the known group members will liquidate the possibility of prevention of other criminal acts or exposure of other members of the criminal group, particularly organizers and customers.

There is foreseen in the law that the following is prohibited, in case it is impossible to prevent threats to the life and health of the person, distribution of dangerous substances, escape of dangerous criminal.

The described control is foreseen to be performed under decision of the particularly authorized prosecutor, but in case for the control of particular criminal activities there appears the necessity to perform investigation activities, demanding judges' order, then they will be dealt with separately.

Conclusions

That is in brief, the worked out supplementation of intelligence activities for clearing up crimes and proving the guilt of the suspect that to our deep content must considerably raise the effectiveness of work of all law enforcement institutions in our state

The promotion of the described novelties, which recently are viewed by lawmaking bodies together with other essential improvements of criminal procedure, tended towards modernization and rationalization.

This and the complete refusal from the institute of terms the essence of which we fail to explain to our western colleagues and the possibility of agreement between the prosecutor and the defence upon the refusal from the court investigation for the trial of collected evidence, the possibility of conditional suspension of the case by the prosecutor, not bringing the case to the court etc. But this seems to be the theme for other presentation at some other, not criminalistic conference.

BIBLIOGRAPHY

1. **Huber B., Klumpe B., Kornile K., Lorenz F. L., Livos N., Rambach P. H. M.** Besondere Ermittlungsmassnahmen zur Bekämpfung der Organisierten Kriminalität in Belgien, Denmark, Großbritanien, Griechenland, Frankreich, 1992.
2. **Roxin C.** Strafverfahrensrecht. – München, 1995.
3. **Kramer B.** Grundbegriffe des Strafverfahrensrechts. – Stuttgart, Berlin, Köln, 1997.
4. Code De Procédure Pénale. – Éditions Dallaz, 1998.
5. Die polizeilishe Zusammenarbeit mit U-Personen, 1992. – Kriminalistik Verlag Gmbh, 1992.
6. Draft Limited National Convention against Tradicional Organized Crime.
7. **Овчинский В. С.** XXI век против мафии. – Москва: ИНФРА-М, 2001.
8. **Kavalieris A.** Speciālās izmeklēšanas darbības. – Rīga: Ra-Ka, 2003.

Kriminalistinės ir operatyvinės paieškos veiklų integracija – nusikaltimų tyrimo efektyvumo didinimas

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SANTRAUKA

Dabartinė nusikaltimų tyrimo Latvijos Respublikoje praktika, susijusi su nusikalstamų grupuočių įvykdytais nusikaltimais, įrodė, kad susekti kaltuosius asmenis bei patraukti juos baudžiamojon atsakomybėn tradiciniais, senais metodais – akistata, apklausa, paieška ir kt. yra gana sunku.

Remiantis Latvijos policijos akademijos Kriminalistikos katedros atlikto tyrimo rezultatais buvo parengtas Latvijos Respublikos baudžiamojo proceso kodekso papildymas. Kodeksą siūloma papildyti skyriumi „Specialiu pagrindu atliekami tardymo veiksmai“.

Specialus skyriuje nagrinėjamų tardymo veiksmų pagrindas pasižymi trimis aspektais.

Pirma, nors visi kiti tardymo veiksmai yra vykdomi esant paties tardytojo sprendimui, skyriuje numatytiems veiksmams atlikti reikia prokuroro arba teisėjo sankcijos.

Antra, skirtingai nuo kitų tardymo veiksmų, apie kurių atlikimą asmuo, kurio atžvilgiu jie atliekami, sužino iš karto, apie skyriuje nagrinėjamų veiksmų įgyvendinimą įtariamieji asmenys nežino, todėl negali jiems priešintis ir daryti įtaką atliekant tokius veiksmus gaunamai informacijai. Įtariamieji asmenys apie skyriuje nagrinėjamų veiksmų atlikimo faktą sužino tik baigus ikiteisminį tyrimą.

Trečia, skyriuje nagrinėjamus veiksmus atlieka policijos pareigūnai.

Iš viso minėtame Latvijos Respublikos baudžiamojo proceso kodekso papildyme numatyti devyni veiksmai. Tai visos teisėtos korespondencijos kontrolė, visų įmanomų ryšio priemonių kontrolė, asmens bei vietos audiokontrolė, vietos videokontrolė, asmens stebėjimas ir sekimas, objekto ar vietos stebėjimas, specialus tardymo eksperimentas, specialus lyginamųjų pavyzdžių gavimas, nusikalstamos veikos kontrolė.