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POST DIPLOMATIC-MASTER STUDIES

THEME:

**TECHNICAL RECORDING OF TELECOMMUNICATION AND
SURVEILLANCE - THEIR IMPACT ON A FAIR TRIAL**

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ABSTRACT

This paper aims to explain the actions of the special investigation with a focus on surveillance and technical recording of telecommunication paying attention to their results in the discovery and justification of criminal offenses, but also protecting the right to privacy and family life, with case of enterprise of these actions.

These are actions that are usually entrenched in some of the fundamental rights of citizens and are applied when other identifying actions are not or may not be effective in terms of generating new evidence. Also, the paper aims to present the differences between the classic actions of identification which is much lower degree of violation of the right to privacy and the inclusion of specific investigative actions of surveillance and technical recording of telecommunication where there is a high degree of restriction of the right to privacy of the suspect or other persons. These actions must be in accordance with legal provisions, it is very important that within the permissible relevant facts gathered which show the existence of the crime and its relationship with the suspect.

Keywords: surveillance and technical recording of telecommunication, forms, tests, bodyized crime, security agencies, human rights, secret technical measures of investigation and surveillance.

CONCLUSION

Special investigative measures of surveillance and investigation represent a novelty in the Criminal Procedure Code of the Republic of Kosovo. The need for the introduction of special investigative actions in the criminal procedural legislation has imposed the increase of the phenomenon of organized crime and the specific ways of doing the special commission of the offenses, organization and conspiracy to perpetrators of such offenses. These new factors make difficult the detection and prosecution of the perpetrators of these criminal acts committed with classic investigative actions. Organized crime as a social phenomenon of transnational questions the fundamental values on most modern states. Also, criminal activities which are expressed through modern organized crime more are more difficult to prevent and disclose, although both are emphasizing requirements for effective preventive and repressive action of the body of criminal justice. Detection and prosecution of perpetrators of organized crime is not only burdened with the above circumstances. In particular, criminal justice reaction associated with these unlawful behavior follow the requirements for placing it within the rule of law. Such request comes from the international law of human rights and international documents. Therefore, these measures fighting against organized crime, indicate a temporary limitation of the rights and fundamental freedoms in the process of collecting information and necessary evidence for the implementation of criminal procedure. The actions and measures of special investigative increase the efficiency of the body of the criminal proceedings in the detection of certain offenses, but with them, at the same time, the rights and freedoms of citizens are violated, especially the right to privacy and protection of family life.

Scope of special investigative actions is not limited to criminal offenses of bodyized crime, but they are applicable to the offenses that carry a growing social threat to the safety of citizens and property. Basically, this is a move which enters deeper into some of the fundamental rights of citizens, which apply when other acts of evidence are not or can not have an effect in terms of collecting evidence when the collection of evidence with these classic actions has been associated with great difficulty. In the paper is confirmed that traditional or classic methods, when it comes to fighting efficient and powerful bodyized crime, may not yield the expected results, which clearly show the feasibility and appropriateness of implementing these actions of evidence.

Procedure of implementation of specific investigative actions by law is not accurately defined, which may be concluded that it is covered by the subject of operational work, where these actions are realized by the agencies for law enforcement, with the right methodology and in the manner provided by domestic / internal acts. We note that the above mentioned tactics and tactics of implementation of such actions are not projected nowhere, but only formal conditions are provided for their implementation. In analyzing the implementation of the special investigation, surveillance and technical recording of telecommunication some problems and weaknesses are present that appear in its application and one of the problems is the time remaining for the duration of these actions.

Secret surveillance and technical recording of telecommunication usually are carried out with specific investigative actions by secret surveillance and technical recording of persons, vehicles and objects which are linked to and the inconsistency of the terms of such investigative actions leads to difficulties in their common implementation. Indeed, surveillance and technical recording of telecommunication maximally lasts 6 months, while thesecret surveillance and technical recordings of persons, vehicles and objects which are associated with them, lasting 3 months and therefore leads to difficulties in common implementation of these actions.

One of the problems present in the implementation of these actions is that telephone tapping is not functional because there is a discrepancy in determining the location of the user of telephone numbers. To eliminate these problems and weaknesses is necessary to improve legal regulations, especially those related to communication by imposing the teleoperators company to eliminate the omissions mentioned.

It is very important that the persons who perform specific investigative of surveillance and technical recordings of telecommunication to be trained, as in the technical point of view, also trained sufficiently, so they can use technical means to carry out these actions.

It is necessary to work on technical equipment because the technical deficiency causes difficulties in collecting data for telecommunication services, which are used by people to whom this special investigative measure is implemented.

It is necessary to enter obligatory acts regulating the form, as well as the content of such a procedure, upon taking all special investigative actions.

During the drafting of this paper, we started from a hypothetical frame that the Law of Criminal / Punitive Procedure of the Republic of Kosovo is not regulated enough in the field of application of the special investigation, surveillance and technical recordings of telecommunication in detecting and proving the acts of serious offenses.

In the context of empirical research, from the data submitted, it was not possible to draw comprehensive conclusions from what was mentioned above.