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Special investigative actions in the criminal procedural law of Bosnia and Herzegovina, and their purposefulness in law

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Abstract. Special investigative actions are a novelty in the criminal procedure legislation BiH. In our legislation this has been introduced only in 2003. These are actions that need to assist prosecutors to effectively reveal the perpetrators and the evidence of serious and complex crimes, especially organized crime. There are criminal offenses in whose execution included a larger number of people in different locations and which are carried out with the help of new communication technologies, so that it is not possible to prove the classic means of evidence (documents, physical evidence, witnesses). Unfortunately, criminals are often better organized than the state and in their criminal activities are introduced various technological developments. Therefore, the legislator extended the powers of the prosecutor and gave them into the hands of more effective mechanisms for discovering the perpetrators of these crimes. Special investigative measures are listed in the Penal Code.

1. General Investigations

Special investigative actions are a novelty in the criminal procedure legislation. In our legislation have been introduced in the year 2003 [1].

These are actions that need to assist prosecutors to effectively reveal the perpetrators and the evidence of serious and complex crimes, especially organized crime [2]. There are criminal offenses in whose execution included a larger number of people in different locations and which are carried out with the help of new communication technologies, so that it is not possible to prove the classic the means of proof (documents, material evidence, witnesses).

Unfortunately, criminals are often better organized than the state and in their criminal activities are introduced various technological developments. Therefore, the legislator extended the powers of the prosecutor and gave them into the hands of more effective mechanisms for discovering the perpetrators of these crimes. Special investigative measures are listed in the Penal Code [3].

1.1. Surveillance and technical recording of telecommunications

Surveillance and technical recording of telecommunications called: WIRETAPPING - in practice it is very applicable, useful and fruitful.

This special investigative action is limited to the right to privacy is not only suspicious person, but indirectly, any third party with whom the suspect makes contact by means of communication.

This special investigative action is done by intercepting communications at a time when communication is still going on (so-called, real-time or on-line control).



Surveillance and technical recording of telecommunications is one of the most special investigative actions in combating organized crime for two reasons:

1. Supporting the value of this special investigative action is indisputable person, because words suspects the best proof of his work and his intentions and
2. Electronic control allows action before committing the crime, if the application of these techniques reveal the planning and preparation of its commission.

Under the content of communications include the information regarding the substance, meaning or significance of any wire, oral or electronic communications.



Figure 1. Technical recording of telecommunications

1.2. Access to computer systems and computerized data

Access to computer systems and computerized data apply within the computer crimes - example. double accountancy, correspondence and other.

Access to computer systems means a collection of various technical means and procedures that are used to from one computer system covertly gathered data through interventions conducted from a distance through electronic networks. It is an electronic the opening of a computer system by the state investigative authority and electronic transmission of data computer where the measure is applied using special forensic computer programs [4].



Figure 2. Access to computer systems

1.3. Surveillance and technical recording facilities

Private and other premises are monitored and recorded. These actions relate to people and their actions, such as communication or action. These actions include optical and acoustic recording of a particular area, or activities in supervised premises.



Figure 3. Monitoring and recording

1.4. Secretly monitor

Secretly monitor and record PERSONS means of transport and objects that are associated with them – this action today is often applied. It can be done as a classic criminal act but but in this case is not evidence. If there is approval judge in the preliminary procedure for undertaking this special investigative action, then the proof.



Figure 4. Record persons means of transport

1.5. Undercover investigators

Undercover investigator is a police officer who was disguised and inserted into a criminal environment to integrate. The undercover investigator not to carry out a crime, but it can be aider or inciter (provocateur). INFORMANT (INFORMANT) IS THE CITIZEN integrated in the criminal group. It must not be made a criminal offense. Informant long was mounted in special investigative actions. Informant can not be a witness, but remains hidden.,

One of the important specifics of the undercover investigator is reflected in the fact that after his procedural character of the actions taken by the informal. An exception exists in the case of

When undercover investigators heard as a witness, which should be the exception, not the rule. In this situation, the hearing will be conducted undercover investigator so as not to reveal his identity, and that information about his identity are official secrets [5].



Figure 5. Undercover investigator

1.6. Simulated and controlled buy off the subject and simulated bribery

These actions are productive and are very sensitive to provoke offense (Figure 6).

Simulated and controlled buy off the subject - to be used for smuggling drugs, weapons or toxins (buys in / take a smaller amount). In implementing these special investigative actions must not be any provocation of the crime, because that would be overstepping authority (for example, offers the 1 kg of the drug, should not look for another 100 kg).

Simulated bribery - is done to see if the person against whom carried out the special investigative action taking bribes.



Figure 6. Simulated bribery

1.7. Supervised transport

Supervised transport and delivery objects of criminal offense - is done **PASSING** with the intent to determine if a specific person has certain types of goods (if the goods are legitimate, whether the goods are smuggled, prices of goods, etc.).



Figure 7. Supervised transport

These investigative activities under the Criminal Code of Bosnia and Herzegovina can be ordered only for criminal offenses against the integrity of Bosnia and Herzegovina, against humanity and values protected by international law, terrorism, and for criminal offenses for which a punishment of imprisonment of at least three years or more.

2. Organized crime

Organized crime is the most severe form of crime. In organized crime Criminal Code of Bosnia and Herzegovina, includes criminal offenses such as:

- terrorism,
- corruption,
- Money Laundering,
- economic delicts,
- drug trafficking,
- human trafficking,
- smuggling of vehicles,
- smuggling of weapons and others.

Organized crime is a negative social phenomenon, but also very complex, and consequently requires the application of special investigative methods such factors effectively fighting organized crime. For these reasons, in addition to well-organized, planned and been realized preventive and repressive activities and apply special investigative measures, as well as measures of covert data collection on the most serious forms of crime. Effectively countering organized crime can not be achieved using the "classic" and traditional methods of evidence because traditional methods of countering crime, especially organized crime are not fully effective and efficient in suppressing this negative social phenomenon.

3. Special investigative measures in the Criminal Procedure Code of Bosnia and Herzegovina

Codes of Criminal Procedure in Bosnia and Herzegovina provide for special investigative action as specific measures for the purpose suppression of complex forms of crime, these measures temporarily restricting basic rights and freedoms [6], [7].

Act regulated the cases when they can be used special investigative measures, given that they represent the contents of which violate human rights and freedoms, especially the right to privacy and protection of family life. Thus, the special investigative actions used under the following conditions:

- classic INVESTIGATION could not be able to reach EVIDENCE,
- criminal offense for which the penalty is over 3 years in prison

- criminal acts that threaten the safety of state, organized crime and others.

Special investigative actions are carried out when there is reasonable doubt in the investigation stage. The proposal to take specific investigative steps gives police the prosecutor, and the prosecutor to the judge for preliminary proceedings, which provides for authorization to take special investigative actions or taking them does not approve. Special investigative actions conducted by the police and their implementation is the responsibility of the Ministry of Interior, and control over their implementation is carried prosecutor.

Special investigative actions must be applied cautiously, and their application in accordance with the Act only provides legitimacy evidence. When conducting special investigative actions, should make an effort to be less damaging human rights and freedoms

Special investigative actions have a limit of up to six months. Their use is controlled and their preservation is required by law. The Law also stipulates the destruction of the material collected during the implementation of special investigative measures and inform the person to whom they were special investigative procedures.

Special investigative actions in Bosnia and Herzegovina mostly used to solve cases of economic crime.

4. Purposefulness of application special investigative actions in Bosnia and Herzegovina

According to data for 2013, the total number of persons against whom was ordered to conduct an investigation is 4.222. Resolved is 2,187 or 52%, while the rest to deal with 2,035 people or 48%.

For the 1,017 people confirmed indictment (of a total of 1,081 defendants).

If data on the number of persons who confirmed the indictment shall relate to the total number of persons against whom an investigation was conducted, it can be concluded that 24% of suspects indictment is confirmed.

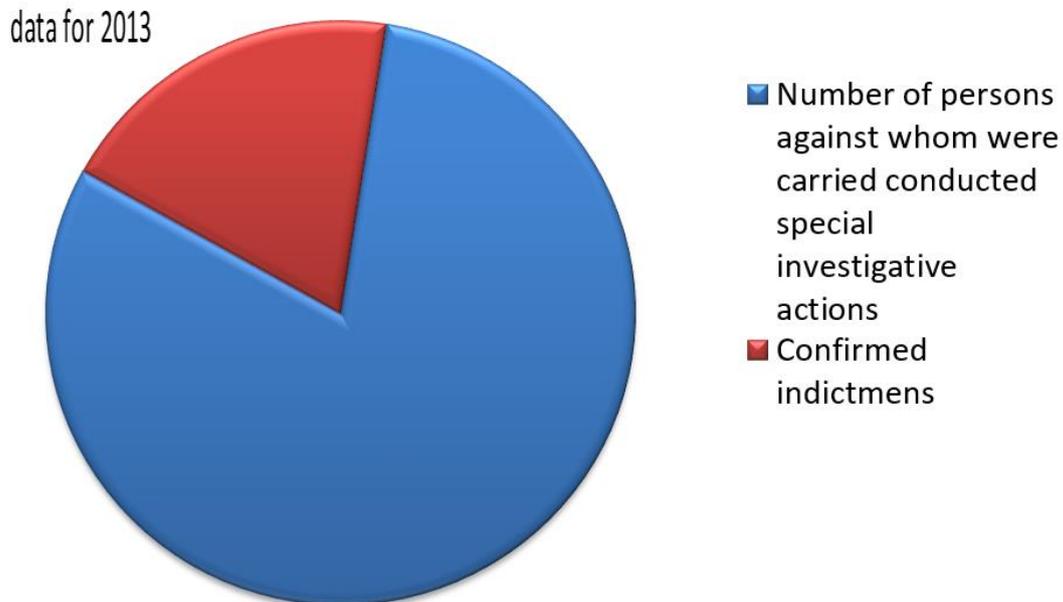


Figure 8. Persons against whom was ordered to conduct an investigation

5. Conclusion

Special investigative measures are very much used in BiH, but do not give satisfactory results. Their use was reduced in the purpose of sale of daily newspapers as well as raising the ratings of television news programs. Very few raised and confirmed indictments and convictions, the best proof of their appropriateness or inappropriateness.

References

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