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SPECIAL INVESTIGATIVE TECHNIQUES IN APPROACHING THE MIGRANT SMUGGLING OFFENCE

Annotation: This article examines the special investigative techniques widely used in the investigation of the migrant smuggling, highlighting the specifics and particularities of these procedures. The paper does not limit itself to a mere theoretical exposition, but also includes a detailed analysis of judicial practice, correlating it with fundamental scientific principles.

The main objective of the research was to assess the tactics used in the application of these procedural techniques, as well as to identify legislative shortcomings, loopholes and inconsistencies in their practical implementation. The research finally provides practical, scientifically substantiated recommendations aimed at supporting the work of prosecuting authorities. The adoption and effective implementation of these recommendations could significantly improve the process of investigating illegal migration, optimizing the work of the competent bodies and strengthening the state's responsibilities in the fight against organized crime.

This article makes a valuable contribution by combining a rigorous theoretical approach with a practical examination, with the ultimate aim of making the fight against crimes related to the migrant smuggling more effective.

Keywords: special investigative techniques, investigation, migrant smuggling, prosecution, tactics, methodology, forensics.

TEHNICI SPECIALE DE INVESTIGAȚIE ÎN ABORDAREA INFRAȚIUNII DE CONTRABANDĂ DE MIGRANȚI

Adnotare: Acest articol examinează tehnicile speciale de investigație utilizate pe scară largă în investigarea traficului de migranți, evidențiind specificul și particularitățile acestor proceduri. Lucrarea nu se limitează la o simplă expunere teoretică, ci include și o analiză detaliată a practicii judiciare, corelând-o cu principiile științifice fundamentale.

Obiectivul principal al cercetării a fost de a evalua tacticile utilizate în aplicarea acestor tehnici procedurale, precum și de a identifica deficiențele legislative, lacunele și inconsecvențele în implementarea lor practică. În cele din urmă, cercetarea oferă recomandări practice, fundamentate științific, care vizează sprijinirea activității autorităților de urmărire penală. Adoptarea

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și implementarea efectivă a acestor recomandări ar putea îmbunătăți semnificativ procesul de investigare a migrației ilegale, precum și optimizarea activității organelor competente și întărirea responsabilităților statului în lupta împotriva crimei organizate.

Acest articol reflectă combinarea unei abordări teoretice riguroase cu o examinare practică, cu scopul final de a eficientiza lupta împotriva infracțiunilor legate de traficul de migranți.

Cuvinte cheie: tehnici speciale de investigare, investigație, contrabandă de migranți, urmărire penală, tactici, metodologie, criminalistică.

1. INTRODUCTION

In investigating the migrant smuggling, special investigative techniques are frequently ordered and implemented, playing a crucial role in tracing and tracking down persons involved in networks organizing illegal migration. These techniques become essential when other investigative methods cannot achieve the objectives of the criminal process or when there is a risk of considerably compromising the handling of evidence.

The importance of these procedural actions lies not only in the frequency with which they are applied, but above all in the effectiveness with which they support the work of the prosecution authorities in combating illegal migration. Even in cases where they are used selectively, a well-founded tactical strategy ensures better management of the criminal process and contributes to strengthening the State's capacity to ensure a full and fair justice process. These techniques, effectively applied, not only facilitate the detection and documentation of crimes, but also strengthen the evidence needed to properly sanction those involved.

2. METHODOLOGY

Theoretical, normative and empirical materials have been used in the preparation of this publication. The subject has been analyzed by applying a variety of scientific research methods, specific to forensic theory and doctrine, such as: logical method, deduction and induction, comparative analysis, systemic analysis. The theoretical and legal basis of this article is represented by the normative regulations in the field of criminal procedure and forensic, with particular emphasis on the particularities of special investigative techniques ordered and applied in the context of investigating the migrant smuggling.

3. DISCUSSIONS

Special investigative techniques play a significant role in the investigation of the migrant smuggling, but knowing the tactics and method of investigation, as well as the order of carrying out these techniques, the prosecuting body can achieve the desired results, and the whole investigation will become an effective one.

From the analysis of the criminal cases we found that the following special investigative techniques are ordered and carried out in the case of investigating the migrant smuggling:

a) Interception of communications and/or images. This special measure „involves the use of technical means by which the content of audio, video, written or graphic information transmitted between two or more persons may be ascertained and the recording thereof involves the storage on a data medium of the information obtained by interception”¹. This

¹ See Art. 138/1 para. (1) Code of Criminal Procedure No 122 of 14.03.2003. Published : 05-11-2013 in

investigative measure sometimes accounts for 68% of the total volume of evidence. For example, in a criminal case² only hearings, examinations and special investigative techniques were carried out, the results of which, in conjunction with other evidence, served to establish the guilt of the defendants. Thanks to the interception and recording of communications the following was established: connections between the perpetrators and between them and the victims, discussions between the accused, communications about the organization of the entry and stay of foreign citizens on the territory of the Republic of Moldova, information about the amounts of money and planning of criminal actions, guiding victims, etc.

b) Collection of information from electronic communication service providers. According to the provisions of Art. 138⁴ para. (1) CPP, „The collection of information from providers of electronic communications services consists in collecting, with the support of the providers of electronic communications services, the information available, generated or processed in the framework of the provision of their own electronic communications services, including roaming, necessary for the identification and tracing of the source of electronic communications, for the identification of the destination, type, date, time and duration of the electronic communication, for the identification of the user’s electronic communications equipment or other device used for communication, for the identification of the coordinates of the mobile terminal equipment (...).”

This special investigative measure is common in cases investigating the migrant smuggling. It enables the prosecuting authority to obtain information on: „telephone numbers registered in the name of the person involved in the migrant smuggling (suspect, defendant, victim or witness); the holders of the telephone numbers or users of the IP addresses; the electronic communication services provided to the user (suspect, defendant, victim or witness); source of the electronic communication (caller’s telephone number or Internet Protocol (IP) address); destination of the electronic communication (called party’s telephone number or Internet Protocol (IP) address); telephone number to which the call is forwarded); type, date, time and duration of the electronic communication, including failed call attempts; the user’s electronic communications equipment or other device used for the communication (the International Mobile Equipment Identifier (IMEI) of the calling and called parties; the Media Access Control (MAC) address of the fixed access equipment at the customer premises (CPE); in the case of anonymous prepaid services - the date and time at which the service was initially activated and the Cell ID from which the service was activated); the location of the mobile communication equipment (Cell ID at the beginning of the call; the geographic location of the cell by reference to the Cell ID, during the period when the data are retained); the physical addresses of the fixed service provider”³.

For example, in a criminal case⁴, by carrying out this special investigative measure

Official Gazette No. 248-251 art. 699. Republished pursuant to Article IV of Law No. 252 of November 8, 2012 - Official Gazette of the Republic of Moldova, 2012, No. 263-269, art. 855.

² Judgment of the Chisinau District Court, Central Office of 11.07.2018, issued in Case no. 1-152/2018. Disponibilă: https://jc.instante.justice.md/ro/pigd_integration/pdf/a103ab1f-0889-e811-80d5-0050568b021b [accesată: 09.02.2023].

³ See Art. 138/4 para. (1) Code of Criminal Procedure No 122 of 14.03.2003. Published : 05-11-2013 in Official Gazette No. 248-251 art. 699. Republished pursuant to Article IV of Law No. 252 of November 8, 2012 - Official Gazette of the Republic of Moldova, 2012, No. 263-269, art. 855.

that allows deciphering phone calls, it was found that, „SIM cards with the numbers XXX, YYY, ZZZ from the mobile phone with IMEI 0001, belonging to DN, which confirms that the latter used the phone numbers indicated in the commission of the crime in the time period March-April 2011, talking to BS, BP, including on 13.02.02.2012 and 13.03.2012, when DN was at work, on the premises of the CCTP of the MIA, by tracing the signals of the calls made”.

The decryptations of the phone calls made „from the SIM card with the number NNN of the mobile phone with IMEI 0002, belonging to CO from which phone calls were made to the phone number XXX belonging to DN on 02.04.2012 and of the phone calls made from the SIM card with the number VVV of the mobile phone with IMEI 0003, belonging to CO from which phone calls were made to the phone number MMM belonging to BS on 15.03.03.2012, as well as the telephone calls made from the SIM card with the number VVVV from the mobile phone with IMEI 0003 belonging to CO from which telephone calls were made to the telephone number BBB belonging to OV from 15.03.2012.”.

According to this special investigative measure, the geographical location of the cells (antennas) located and used by the company „Orange” S.A. was established, by which it was found that „the 3G antenna Cosmos 31134 serves Negruzzi str. 2 mun. Chisinau and 3G antenna Telecentre 30024 serves Alecsandri str. The geographical location of the cells (antennas) located and used by the company „Moldcell” S.A. was also established, by which it was found that the 3G Cosmos 3G antenna (3G1,2,3,4,5,6) serves Negruzzi 2 str., mun. Chisinau and the 3G antenna GAUDEG (3G1,2,3,4,4,5,6) serves Alecsandri str. 1, mun. Chisinau”.

Therefore, this special investigative measure enabled the prosecution body to administer evidence and to obtain important information in order to establish the guilt of the perpetrators, to identify the co-perpetrators of the crime, to identify the victims and witnesses, as well as to obtain information on the location of the defendants from where they directed the criminal actions, provided information on the further actions of the victims, etc. This evidence and information in corroboration with the victims’ hearings and other procedural actions were able to embody the evidence in favor of the prosecution, and the guilty were convicted for the criminal acts committed.

c) *monitoring or control of financial transactions and access to financial information.* According to Art. 138/3 para. (1) CPP, „Monitoring or control of financial transactions and/or access to financial information are the operations ensuring knowledge of the content of financial transactions, in real time or after their completion, carried out by natural and legal persons through banks or other persons/organizations that broker financial transactions or obtaining from those entities the records or information in their possession relating to deposits, accounts or transactions of a person”. This special investigative measure is ordered and carried out in 0.4% of the number of criminal cases (including all officially published judgments) analyzed by us. This special measure is of particular importance, especially when it comes to financial transactions resulting from the migrant smuggling.

For example, in a criminal case it was found that citizens of the Republic of Moldova VR and CO in the period of December 2015 - January 2016, being in the city of Chernivtsi, Ukraine, at the instigation of the citizen of Ukraine MP, a native of Sri Lanka, together with

⁴ Botanica Court, mun. Chisinau, dated 19.03.2015, issued in case no. 1-280/14. Disponibilă: https://jc.instante.justice.md/ro/pigd_integration/pdf/83d102bb-49ce-e411-b888-005056a5d154 [accesată: 18.04.2024].

him, as well as with the participation of the citizen of Norway SK, with the aim of obtaining financial benefits, created and implemented the scheme of activity of the group formed for the purpose of organizing the entry, illegal stay and transit through the territory of the State of a group of persons originating from Sri Lanka, who are neither citizens nor residents of the Republic of Moldova, contributing to their illegal migration from Ukraine to the Republic of Moldova, with the help of several members of the organized criminal group, which included citizens of the Republic of Moldova NI and CV, as well as other persons⁵.

In the case in question, in addition to other special investigative techniques, the measure - *monitoring or control of financial transactions and access to financial information* - was ordered and carried out, thanks to which it was possible to obtain indisputable information and evidence regarding the financial transactions and their amount, the identification of the financier and those who benefited from the transfer, the identification of the victims, as well as information proving the statements made by the initial victims and witnesses.

At the same time, it should be noted that the new trend and methods of committing the migrant smuggling will lead the prosecution body to order the respective special measure to be carried out in a comprehensive manner. Thus, the organizers and perpetrators of this crime recruit and direct criminal actions remotely, using various applications (Viber, Telegram, etc.), sending to the victims of illegal migration geographical maps indicating: exact routes, stopping points (temporary accommodation or rest), locations of pick-up of victims by other co-offenders, points of money transfer or the time and term of transfer. It is important to note that the money that victims of illegal migration have to transfer to criminals is transferred not by bank transfer, but by crypto-currency electronic purses, which makes investigations difficult.

An eloquent example is the criminal case⁶ in which the criminal prosecution was initiated on the fact of organizing illegal migration by an organized criminal group. During the criminal prosecution it was established that in the period XXXX, members of the organized criminal group, through Telegram channel and Tiktok account, identified several men - citizens of the Republic of Ukraine, requesting them to transmit via Binance⁷ financial means for the migrant smuggling. This transfer is made in cryptocurrency USDT⁸.

In other words, without ordering, authorizing and carrying out the special investigative measure - *monitoring or control of financial transactions and access to financial information* - the investigation of crimes of organizing illegal migration is practically impossible.

d) *identification of the subscriber or user of an electronic communications network.*

⁵ Criminal case no. 2016872026, in which the criminal prosecution was initiated on 10.03.2016, on the basis of Art. 362/1, para. (3), letter a) of the Criminal Code, by the prosecution body of the Ministry of Internal Affairs, established within the Border Police Department.

⁶ Criminal case no. 2024871333, in which the criminal prosecution was initiated on 07.07.2024, on the basis of art. 362/1, para. (3), letter a) of the Criminal Code, by the criminal prosecution body of the Ministry of Internal Affairs, established within the General Inspectorate of Border Police.

⁷ Binance is one of the largest international online digital currency exchange services. Dozens of cryptocurrencies are exchanged both with each other and for fiat money. Information from wikipedia. Available: <https://ro.wikipedia.org/wiki/Binance> [accessed: 09.08.2024].

⁸ n.a.: Cryptocurrency model that is estimated: 1 USDT = 1 US dollar. Criminals use USDT cryptocurrency because it is stable in value in the online digital currency exchange market.

The analysis carried out shows that this special investigative measure is carried out in 47% of the investigated cases of migrant smuggling. Carrying out this measure allows the prosecuting body and the investigating officer included in the prosecution group to establish: the identity data of the person involved in the migrant smuggling (this includes the name, surname, address and PTIN of the person involved); the identity data of the subscriber or user of an electronic communications network (international mobile subscriber identifier (IMSI), telephone number, serial number of the subscriber identification module (of the SIM card), internet protocol (IP) address, physical addresses of the fixed service provider) (this information grants the possibility of identification of persons involved in the criminal activity and/or victims (witnesses) of the migrant smuggling) of telephone numbers and/or internet protocol (IP) addresses registered in the name of a person (helps to further identify the person, plan and carry out other special investigative techniques of prosecution); establishing whether an electronic communications service is or was active on a certain date (gives the possibility to combat the perpetrators' versions, verify their statements, as well as victims, submit other forensic versions, etc.)⁹.

An eloquent example is the fact that occurred on 04.03.2023, on the territory served by the Border Police Sector «Perjei Valley», where near the border sign 0738/25, through the fixed observation system, 4 persons were detected crossing the state border from Ukraine to the Republic of Moldova illegally. At 22.15 near the border sign 0738/18, 2 citizens of Ukraine were apprehended, and the other two persons moved in an unknown direction. On 05.03.2023, at 01.35 a.m. the information was received from the Border Guard Service of Ukraine in the Ismail area that at the border sign 0738/22, two carts of tracks leading from Ukraine to the Republic of Moldova were detected. Following checks in the border area the two persons who were traveling in an unknown direction were not detected on either side of the border. The apprehended persons declared that the two persons were citizens of the Republic of Moldova who were intended to help illegally cross the state border from/to the above-mentioned direction¹⁰.

Thus, by ordering and carrying out the special investigative measure - the *identification of the subscriber or user of an electronic communications network* - the prosecuting authority was able to identify a subscriber using the telephone number given by the victims. In this case, the special investigative measure - the *collection of information from electronic communication service providers* - was ordered and carried out, which proved the perpetrator's geo-location during the commission of the crime (organizing illegal migration by illegal crossing of the state border).

It would seem that the two special investigative techniques would overlap, but they do not. In this context, we support the opinion of the author Boris Glavan who states that, „the division of these techniques is based on the idea that not all data processed by providers of electronic communications networks and/or services would have the same level of importance from a human rights perspective. Data identifying the subscriber or

⁹ See the provisions of Art. 138/6 of the Criminal Procedure Code No 122 of 14.03.2003. Published : 05-11-2013 in Official Gazette No. 248-251 art. 699. Republished pursuant to Art. IV of the Law No. 252 of November 8, 2012 - Official Gazette of the Republic of Moldova, 2012, No. 263-269, art. 855.

¹⁰ Criminal case no. 2023870223, initiated on 06.03.2023 by the criminal prosecution body established within the General Inspectorate of the Border Police, based on a reasonable suspicion of committing the offense provided for in Article 362/1 paragraph (3) of the Criminal Code.

user of an electronic communications network, as opposed to traffic and location data, were considered to have a lesser degree of interference with the rights of the individual. Therefore, in order to expedite the procedure for obtaining identification data of the subscriber or user of an electronic communications network, a separate measure was devised, the authorization of which was assigned to the prosecutor. Thus, these two techniques do not overlap but rather complement each other"¹¹.

e) undercover investigation. According to Art. 138/10 para. (1) CPP, „*Undercover investigation is the collection of data and information by the undercover investigator under a coded, fictitious or real identity, acting under and within the limits of the legal provisions. Undercover investigation is authorized for the period necessary to prove the existence of the crime and to identify the perpetrator*’. It should be noted that in cases of investigation of the migrant smuggling, undercover investigation is carried out in 0.7%. Regrettably, from the analysis of criminal cases by the respective type of criminal offenses we note that this special investigative measure could have been carried out in several criminal cases, but it was not ordered. In this regard, the prosecuting authority has given priority to other special investigative techniques. To be clear, we do not aim to blame the prosecuting body, as the methodology of investigation is chosen by each prosecuting officer on his own, based on the circumstances of the case. This aspect is also dictated by the provisions of the law, thus, according to Art. 57 para. (4) CPP, „*in the exercise of his procedural duties, the criminal prosecution officer decides independently on the direction of the criminal prosecution and the conduct of the criminal prosecution actions, (...)*”.

However, in the cases where this special measure has been ordered, the results have been effective, with indisputable evidence, the entire criminal network uncovered and all perpetrators identified. As an example, the materials of the criminal case no. 2016872026¹², which was initiated on the organization, with the aim of obtaining, directly or indirectly, a financial or material benefit, of the illegal entry, stay, transit through or exit from the territory of the Republic of Moldova of persons from Sri Lanka, who are neither citizens nor residents of the Republic of Moldova, committed by an organized criminal group, with the aim of reaching the European Union through transit through the Republic of Moldova, may serve as an example.

During the criminal prosecution, a special investigative measure - undercover investigation - was ordered. Thanks to this measure it was established: the composition of the organized criminal group, composed of citizens of the Republic of Moldova, Ukraine, Romania, Norway, Russia and others; information on the whereabouts of migrants and some active members of the criminal group; information on the links between them; information on financial transactions and identification of the financier and those who benefited from the transfer, etc.; information on the entire criminal activity, including the actions of each of them, the role of each member in the organized criminal group, the means of transport and other tools for committing the crime and other useful information.

We support the view of some authors who state that, „covert investigation is carried

¹¹ Glavan Boris Boris, Conceptual approaches to special investigative activity under the rule of law. PhD Thesis, CZU: 343.1(043.3), Chisinau, 2024, p. 220.

¹² Criminal case no. 2016872026, in which the criminal prosecution was initiated on 10.03.2016, on the basis of Art. 362/1, para. (3), letter a) of the Criminal Code, by the criminal prosecution body of the Ministry of Internal Affairs, established within the Border Police Department.

out using covert resources, means and methods, which are selected according to the specific requirements and concrete circumstances. The defining elements of covert investigations include questioning, monitoring and intelligence gathering and can be considered as an integral part of the activities carried out under this measure. This measure involves conspiratorial participation in other actions that are related to solving or creating conditions for solving the tasks of special investigative activity. Undercover investigation is composed of a set of actions which are not expressly specified in the legislation, but which include actions of other special techniques authorized by the prosecutor or the head of the specialized subdivision and which are directed to the collection of information necessary for the performance of the tasks of the special investigative activity. This measure may also include actions that fall within the competence of the investigating judge, but in this case, prior authorization by the judge is required¹³.

f) *visual tracking*. According to Art. 138/11 CPP, „*Visual tracking is the recording and chronological fixing of actions/actions, positions, movements and contacts (links) of persons, surveillance of real estate, tracking and tracing of means of transportation and other objects*”. Visual tracing, like undercover investigation, is part of the special investigative techniques which are ordered less in the case of investigation of the migrant smuggling (1.2%). Due to time saving and non-repetition, the arguments for not using undercover investigation to the extent possible are also eligible for visual tracing. Similarly, the prosecuting body prioritizes other special investigative techniques on the one hand, and at the same time the majority of illegal migrants are apprehended at the state border, either by patrol or by using state border surveillance technology on the other hand.

We hold the same view as in the case of the undercover investigation. The visual tracing would not hinder the investigations, even if other special investigative techniques were ordered and carried out, on the contrary, its results would make the investigations more efficient, the planning of activities at different stages of investigation, etc. We consider, from the analysis carried out, that visual tracing is of major and effective importance in the investigation of this type of crime.

The example brought to the undercover investigation¹⁴ is also useful in the case of visual tracking. Thanks to the arrangement and carrying out of the visual tracking it was possible to obtain generous information on: the chronology of the criminal actions, the places of temporary accommodation of the perpetrators and victims of illegal migration, the links and the place of meetings carried out by them, the tracking and localization of the means of transportation used by the perpetrators and with which they transported the victims from one address to another, from one area to another (from the eastern to the western border of the Republic of Moldova, from the border to the hotel where the victims were temporarily accommodated, etc.).

Rightly, some authors state that, „The special investigative measure of visual surveillance is an observation, a secret or legendary, continuous or periodic surveillance of persons, means of transportation, buildings or other objects of operational interest, in

¹³ Glavan Boris Boris, Conceptual approaches to special investigative activity under the rule of law. PhD Thesis, CZU: 343.1(043.3), Chisinau, 2024, p. 235-236.

¹⁴ Criminal case no. 2016872026, in which the criminal prosecution was initiated on 10.03.2016, on the basis of Art. 362/1, para. (3), letter a) of the Criminal Code, by the criminal prosecution body of the Ministry of Internal Affairs, established within the Border Police Department.

order to collect information on the acquisition and confirmation of information, which favors prevention, the investigation or discovery of offenses, the search for persons who are hiding from prosecution and trial, including convicted persons who are evading punishment, the location of persons who have disappeared without trace and the establishment of circumstances unclear in the criminal proceedings, the collection of information about possible events and/or actions that could jeopardize state security”¹⁵.

g) information gathering. According to Art. 138/12 para. (1) CPP, „*Gathering of information consists in acquiring information about natural and legal persons, movable and immovable property, facts, events and circumstances of interest, through direct communication with other persons, through the study of documents, materials, databases, information systems and open sources, through the request to natural and legal persons who possess or have information of interest, as well as through the use of a photobooth and other methods that provide the possibility of identifying a person with a higher probability*”.

This investigative measure is found in every case of investigation of the migrant smuggling, because we cannot imagine that without information about facts, goods, persons, etc., a criminal act could be investigated. It is also important to mention that this special investigative measure is relatively new in the criminal procedural legislation, which replaced three previous special investigative techniques: questioning, gathering information about persons and facts and identification of the person.

„This new measure has been designed to accumulate and systematize data and to manage it as evidence, through databases and information systems or by collecting information on the spot. The main aim was to use the information contained in these databases and information systems as evidence. Thus, the aim was to replace the investigating officers’ reports recording the results of the three merged techniques for which there was no credible mechanism to verify the authenticity of the information provided. It was stipulated that the results of the collection of information should be recorded in a *procès-verbal*, so that the investigating officer would be legally responsible for the accuracy and veracity of the information submitted. This measure was designed to be carried out not only outside the criminal proceedings but also within them, and as an exception it was allowed to be carried out even from the moment the criminal proceedings began, and not only in the case of serious, particularly serious and exceptionally serious offenses, but also in the case of less serious and less serious offenses”¹⁶.

At the same time, we can add that this new special investigative measure has given the prosecution body a wider possibility to prove the answers to the requests made, by studying and analyzing them, as well as aspects of identification of suspects through the use of the photobooth, which previously were not evidence and only information that helped in planning and initiating legal proceedings. Once they are considered as evidence, it facilitates and justifies the respective actions of law enforcement bodies by excluding abuses.

¹⁵ Cicală Alexandru, The particularities of the special investigative measure „Visual Tracing”, in: *Revista Națională de Drept* nr. 3(245)/2021/ISSN 1811-0770/ISSNe 2587-411x, p. 55 (p. 49-56).

¹⁶ Glavan Boris Boris, Conceptual approaches to special investigative activity under the rule of law. PhD Thesis, CZU: 343.1(043.3), Chisinau, 2024, p. 247-248; Informative Note to the Draft Law on the amendment of some normative acts (on special investigative activity), p. 58. Available: <https://justice.gov.md/ro/content/proiectul-de-lege-pentru-modificarea-unor-acte-normative-privind-activitatea-speciala-de-1> [accessed: 03.07.2024].

For example, according to the respective measure it was obtained „*Information of AIR MOLDOVA Airline Company by which it was established that the tickets for the flights performed by CA „Air Moldova” SRL on 20.05.2022 and 01.06.2022 (9U746 Istanbul-Chisinau were issued through a Ticket Sales Agency, which operates on the territory of the Republic XXX. As far as the flight 9U 745 from 22.05.2022 with the route Chisinau-Istanbul is concerned, this ticket was issued by CA „Air Moldova” SRL on behalf of the company, because the passenger was not admitted on the territory of the Republic of Moldova. Likewise, the information of the Joint Contact Center „Galati” dated 14.07.2022 was obtained regarding the entries-exits of cet. AM and YT. It is attested that Mr. AM entered the Romanian territory on XXX, at YYYY time and also on XXX he leaves the Romanian territory, at ZZZ time as a passenger. On WWW, time OOO he entered Romania as a passenger on WWW, time OOO and on TTT he left, as well as the entry-exit cet. YT in the period BBB and until NNN*”¹⁷. The prosecuting authority, having obtained the information, considered it important for the criminal case, as it not only constituted evidence, but also helped in the further planning of the prosecution and other special investigative techniques.

As regards the special investigative techniques in cases of organizing illegal migration, it should be noted that the criminal procedural law does not grant the possibility to order and carry out them in all cases. Regarding the criminal offenses covered by Art. 362/1 paras. (2) and (3) of the Criminal Code, if the conditions set out in Article 133 para. (1) CPP, all special investigative techniques may be ordered and carried out, taking into account the specific nature of the offense.

For the offense committed under Art. 362/1 para. (1) of the Criminal Code, the CPC regulates the possibility (if the conditions set out in Art. 133 para. (1) CPP) of ordering and carrying out only the following special investigative techniques: *interception of communications and/or images; monitoring or control of financial transactions and/or access to financial information; identification of the subscriber or user of an electronic communication network*.

These special investigative techniques are ordered and carried out for the offenses referred to in Article 362/1 para. (1) of the Criminal Code because the criminal procedure law grants the possibility to carry out these techniques also for light and less serious offenses, which is expressly regulated (Art. 138/1 para. (2) CPP, 138/3 para. (2) CPP, Art. 138/6 para. (6) CPP, art. 138/12 para. (2) CPP). In other words, the legislator, for some types of light or less serious offenses (such as the offense provided for in Art. 362/1 para. (1) of the Criminal Code) has regulated some exceptions, taking into account the specificity of the commission of these offenses, as well as the impossibility of administering evidence without the respective special techniques.

However, we believe that these special investigative techniques are not sufficient for the collection of evidence, the identification of all victims and perpetrators, the place of temporary accommodation of victims, the route of their travel and many other circumstances. At the same time, the migrant smuggling is a cross-border crime, and without carrying out other special investigative techniques it is complicated to uncover all the

¹⁷ Judgment of the Hâncești Court, Central Office, of 17.08.2022, issued in Case no. 1-234/2022. Available: https://jhn.instante.justice.md/ro/pigd_integration/pdf/0369f9c9-cfc2-4d9f-8ccf-32bc61eef098 [accessed: 09.05.2024].

circumstances of the crime, at least those committed on the territory of the Republic of Moldova. Of course, all special investigative techniques, as we have noted above, can be ordered and carried out only for the offenses referred to in Art. 362/1 para. (2) and (3) of the Criminal Code, as they fall within the category of serious crimes.

The analysis of the materials of the criminal cases shows that criminal prosecution can be initiated on the basis of Art. 362/1 para. (1) of the Criminal Code, having initial reasonable suspicion. Subsequently, during the criminal prosecution, it is established that the crime was committed by an organized criminal group or, for example, the crime was committed with the production of false identity documents. Naturally, the crime is subsequently reclassified in accordance with the actions established during the criminal prosecution. However, the analysis notes that if the special investigative techniques were carried out in time, immediately, even if the criminal prosecution was initiated on the basis of Art. 362/1 para. (1) of the Criminal Code, then the prosecutor could have taken other legal techniques to identify and apprehend the perpetrators and identify more victims, could have planned the actions more efficiently, etc.

For example, the same visual tracking, if it was possible to carry out it, would establish the circle of persons involved in organizing illegal migration, the route taken, etc., not to mention undercover investigation, technical surveillance, collection of information from electronic communication service providers and others.

We do not understand the legislator's logic when, for some light offenses, he grants the possibility of interception of communications and/or images, which, as we know, the Republic of Moldova has suffered (for example, the case of the ECtEDO Iordache and others v. Moldova), and for other types of offenses, where there is a need to order their use, when evidence cannot be obtained by other means, and there is proportionality with the restriction of fundamental human rights and freedoms. We do not advocate that all the special investigative techniques should be carried out for the offense indicated in Art. 362/1 para. (1) of the Criminal Code, but some of them are unavoidable, such as: visual surveillance, technical surveillance, undercover investigation, collection of information from electronic communication service providers, accessing and/or interception of computer data.

For example, in the case of undercover investigation the investigator collects data and information about facts and persons (Art. 138/10 para. (5) CPP), and if this measure is ordered and carried out separately then it is also allowed for minor and less serious offenses (Art. 138/12 para. (2) CPP), i.e. it is essentially the same special investigative measure. However, it should not be forgotten that the results of the special investigative measure in question provide the prosecuting authority with information and data useful not only for the collection of evidence, but also for the subsequent correct characterization or re-characterization of the perpetrator's actions and the identification of many other circumstances.

The same arguments are applicable to technical surveillance, where once authorized, this will give the possibility to identify the perpetrators and victims of the crime (bearing in mind that they are not kept in the country for a long period, it is a matter of a few days, where they may be unidentifiable in the future, especially if their identity documents are false, either they choose the green border crossing) etc.

In cases where the crime is organized remotely, through the use of applications,

where victims are guided by messages, maps, different locations, carry out subsequent transfers of cryptocurrencies, then access and/or interception of computer data is justified.

In the same vein, the legislator's logic is not justified when in some procedural rules the possibility of carrying out special investigative techniques to investigate the migrant smuggling is directly included, while in others it is not. From what analysis did the authors start or what was their reasoning? In our opinion, these considerations were based on the fact that the migrant smuggling is committed by only a few methods and that it is inappropriate to carry out special investigative techniques on the crime provided for in Art. 362/1 para. (1) of the Criminal Code. Our analysis proved the opposite.

Thus, limiting special techniques to only certain types of crimes, without providing a unitary framework for investigating the migrant smuggling, may create gaps in the justice process. The logic of the legislator, which allows special investigative techniques to be ordered for some crimes of a similar nature and restricts it in other cases, is not fully justified, given the complexity and seriousness of the phenomenon of illegal migration. Such a piecemeal approach risks undermining the effectiveness of investigations and limiting the ability of prosecutors to obtain conclusive evidence and ensure that all persons involved are held accountable.

A revision of the regulatory framework is therefore necessary to allow for a broader and more flexible application of special investigative techniques in cases of organized illegal migration. Expanded investigative possibilities would not only contribute to better documentation of criminal offenses, but would also strengthen efforts to prevent and combat illegal migration, thus reinforcing the positive obligations of the state to protect public order and national security. This would require a legislative reassessment that recognizes the specificity and dangerousness of crimes related to illegal migration, thus allowing the application of appropriate investigative techniques that are adequate and appropriate to the complexity of this criminal phenomenon.

4. CONCLUSIONS

Special investigative techniques play an essential role in the investigation of the crime of organizing illegal migration, having a direct impact on the efficiency and success of the criminal proceedings. In the specific context of this crime, techniques such as interception of communications and/or images, monitoring or control of financial transactions, access to financial information and identification of the subscriber or user of an electronic communication network are indispensable for obtaining the necessary evidence and conducting a complete investigation.

These special investigative techniques provide crucial information on the modus operandi of criminal networks, thus identifying links between the members of the groups involved and their plans of action, implicit in cases where criminals use advanced technologies to coordinate illegal activities, thus avoiding direct physical contact and leaving few tangible traces that can be traced by traditional methods.

They are also effective in cases where criminals use multiple devices and accounts to communicate and coordinate their activities. The accurate identification of users of electronic communication networks can lead to the unmasking of the entire criminal network, allowing authorities to act effectively to disrupt illegal activities.

Monitoring and control of financial transactions, together with access to financial intelligence, are essential to uncover the financial flows that support illegal migration activities. These techniques help to uncover funding networks by identifying the sources and destinations of funds. As crimes related to illegal migration often involve large sums of money and complex financial transactions, tracing these financial flows can provide decisive evidence to prove the involvement of suspects in criminal activities.

The results obtained through the application of these special investigative techniques are not only useful, but often decisive in establishing the evidence needed to convict criminals involved in organizing illegal migration. They also support the planning and conduct of other prosecutions, contributing to a coherent and efficient criminal investigation. The importance of these techniques is amplified by the complex and cross-border nature of illegal migration crime, where the ability to collect and analyze information in real time can make the difference between the success and failure of an investigation.

Special investigative techniques not only facilitate the work of law enforcement, but also strengthen state efforts to combat illegal migration and other forms of organized crime. In a context where criminals are constantly adapting their methods to circumvent the law, the extension and adaptation of these techniques is essential to ensure effective border protection and to ensure that justice is applied fairly and completely.

The applicability and importance of special investigative techniques in the investigation of the crime of organizing illegal migration are obvious, but the analysis carried out reveals the need to expand them to keep pace with new methods of committing crimes, including remotely guiding victims through various apps, using temporary accommodation places and identifying routes of illegal crossing of the state border.

The evolution of criminal methods and the cross-border nature of illegal migration call for a more flexible and comprehensive approach to the legislative framework. The current limitation of special investigative techniques is not sufficient to cope with the complexity of these crimes, which raises questions about the logic of the legislator. In this respect, a revision of Articles 138, 138/4 para. (4), 138/5 para. (3), 138/10 and 138/11 of the CPP, so as to allow for the ordering and carrying out of appropriate special investigative techniques also in the case of the offense referred to in Article 362/1 para. (1) of the Criminal Code. Such an extension of special techniques would provide the prosecution authorities with the necessary tools to effectively counter international criminal networks, strengthening the State's ability to ensure a fair and complete judicial process.

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