

MODERN TECHNIQUES USED IN THE FORENSIC INVESTIGATION OF CORRUPTION OFFENCES

*Adrian Cristian MOISE**

Abstract

The article presents and analyzes the most important special investigation techniques used in the investigation of corruption offences. Also, the article analyzes one of the acts of criminal prosecution often carried out in the case of the forensic investigation of corruption offences: detecting the flagrant crime of corruption.

Key Words: *special techniques; investigation; forensic; offences; corruption.*

JEL Classification: [K14]

1. Introduction

In Romania, the corruption offences are provided by Articles 289-294 of the Romanian Criminal Code and by Law no.78/ 2000 for the prevention, discovery and sanctioning of corruption acts with subsequent amendments and completions. The offences of corruption provided by the Romanian Criminal Code are the following: the offence of offering a bribe (Article 289), the offense of soliciting a bribe (Article 290), influence trafficking (Article 291) and buying influence (Article 292).

The corruption offences are also regulated by Law no.78/2000 for the prevention, discovery and sanctioning of corruption acts with subsequent amendments and completions. According to the Law no. 78/2000, the offences stipulated in the Articles 289-292 of the Romanian Criminal Code are considered as corruption offences, even when they are committed by the persons provided in the Article 308 of the Romanian Criminal Code:

”1) The provisions of Articles 289-292, 295, 297-301 and 304 regarding civil servants shall also apply to the acts committed by or in relation to persons exercising, permanently or temporarily, with or without remuneration, a task of any kind in the service of a natural person among those provided in the Article 175 para. (2) or within any legal entity.

(2) In this case, the special limits of the punishment shall be reduced by one third”.

Also, according to the provisions of the same law, there are offences assimilated to the corruption offences, the offences provided in the Articles 10-13. The provisions of Law no. 78/2000 are also applicable to offences against the

* Associate Professor, PhD, Spiru Haret University of Bucharest, Faculty of Juridical, Economic and Administrative Sciences, Craiova, Romania; Attorney-at-law, Dolj Bar Association, Romania.

financial interests of the European Union provided for in art.181-185, by sanctioning the protection of the funds and resources of the European Union (Article 5, paragraph (1)(2)(3) of Law no. 78/2000).

One of the most important legal instruments at international level in the fight against corruption is the Convention of the Council of Europe on Corruption, which classifies the phenomenon of corruption in two ways of committing (Lippman, 2010: 517): the active corruption and the passive corruption. The Council of Europe Convention on Corruption was adopted in Strasbourg on the 27th of January 1999 and entered into force on the 1st of July 2002.

According to Article 2 of the Council of Europe Convention on Corruption, the *active corruption* is defined as "the promising, offering or giving by any person committed intentionally, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions".

According to Article 3 of the Council of Europe Convention on Corruption, the *passive corruption* constă în "the request or receipt by any of its public officials committed intentionally, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions".

2. Special techniques for the criminal investigation of corruption offences

The special techniques of criminal investigation of corruption offences can be found in the Romanian Criminal Procedure Code, both in Chapter IV, entitled *Special methods of supervision or investigation*, as well as in the classic criminal prosecution acts, which are performed for the administration of evidence.

In accordance with the provisions of Article 138 of the Romanian Criminal Procedure Code, the following special methods of supervision or investigation are considered: interception of communications or any type of distance communication; access to a computer system; video, audio or photo surveillance; location or tracking by technical means; obtaining data on a person's financial transactions; retention, delivery or search of postal items; the use of undercover investigators and collaborators; authorized participation in certain activities; supervised delivery; obtaining the traffic and location data processed by the providers of public electronic communications networks or the providers of electronic communications services intended for the public.

The classic criminal prosecution acts, which are carried out in the field of the criminal investigation of corruption offences for the purpose of administering evidence, are the following: home, corporal, computer and vehicle searches; picking up objects and documents; hearing of witnesses, suspects or defendants; findings and expertises; the flagrant; the on-site research; the reconstitution; supervision of bank accounts; preservation of computer data.

The National Anticorruption Directorate, which represents one of the bodies that have powers in the fight against corruption offences in Romania, is authorized

to possess and use appropriate means for obtaining, verifying, processing and storing information regarding the corruption acts provided in Law no. 78/2000, as subsequently amended, according to the law. Any information with operational value of another nature is immediately transmitted to the authorities authorized by law, for its verification and capitalization, according to the provisions of Article 15¹ of the Government Emergency Ordinance no. 43/2002 regarding the National Anticorruption Directorate with the subsequent amendments.

According to the Recommendation (2005) of the Committee of Ministers of the Council of Europe, the notion of *special investigation techniques* means the techniques applied by the competent authorities in criminal investigations, aiming at the detection or investigation of serious crimes and suspects in order to gather information, in such a way that the persons concerned are not aware of this. There are other legal instruments at international level that refer to special investigation techniques, such as: the Second Additional Protocol to the European Convention on Judicial Assistance in Criminal Matters, which refers to the supervised delivery and cross-border surveillance; the Convention of the Council of Europe on Cybercrime which refers to the rapid preservation of stored computer data and to the computer search.

The special investigation techniques are important tools in the fight against serious crime, including corruption offences (Lippman, 2010: 517-521). Also, these special investigation techniques imply by the way of accomplishment interferences with the right to privacy, so it is necessary to respect the European standards of protection, included in the Article 8 of the European Convention on Human Rights, as well as in the case law of the European Court of Human Rights (Udroiu, Slăvoiu, Predescu, 2009: 3). Article 8 of the European Convention on Human Rights provides: "Everyone has the right to respect for his private and family life, his home and his correspondence".

The interference exercised by the authorities or third parties is a limitation on the exercise of the rights to privacy, home or correspondence, and in order to comply with the provisions of the Convention, it must cumulatively meet the following criteria: the interference must be provided by law; the interference must serve a legitimate purpose; the interference must be necessary in a democratic society; the interference must be proportionate to the intended purpose.

Article 138 of the Romanian Criminal Procedure Code contains the special methods of supervision or investigation:

a. *Interception of communications or any type of distance communication*, which means the interception, access, monitoring, collecting or recording of communications made by telephone, computer system or any other means of communication.

b. *Access to a computer system*, which represents the penetration into a computer system or a means of storing computer data, either directly or remotely, through specialized programs or through a network, in order to identify evidence.

c. *Video, audio or photo surveillance*, that refers to photographing people, observing or recording their conversations, movements or other activities.

d. *Location or tracking by technical means*, which means the use of devices that determine the place where the person is or the object to which they are attached.

e. *Obtaining data regarding the financial transactions of a person*, which refers to the operations through which the content of the financial transactions and other operations performed or to be carried out through a credit institution or other financial entity is ensured, as well as obtaining from a credit institution or other financial entity of documents or information in its possession regarding a person's transactions or operations.

f. *Retention, delivery or search of postal items*, which means the verification, by physical or technical means, of letters, other postal items or of objects transmitted by any means.

g. *The use of undercover investigators and collaborators*, which means the use of persons with a different identity than the real one for the purpose of obtaining data and information on committing a corruption crime.

h. *Authorized participation in certain activities*, which refers to committing a deed similar to the objective side of a corruption offence, carrying out transactions, operations or any kind of agreement regarding a good or a person who is suspected to be missing, that is victim of human trafficking or abduction, carrying out drug operations, as well as providing a service, carried out with the authorization of the competent judicial body, in order to obtain means of evidence.

i. *Supervised delivery* which represents a surveillance and research technique that allows the entry, transit or exit from the territory of the country of goods in respect of which there is a suspicion regarding the illicit character of their possession or obtaining, under the supervision or with the authorization of the competent authorities, in the purpose of investigating a crime or identifying the persons involved in committing this crime.

j. *Obtaining the traffic and location data processed by the providers of public electronic communications networks or the providers of electronic communications services intended for the public*.

The investigation methods presented in the Article 138 (1)(a) - (d) of the Romanian Criminal Procedure Code are used under the name of *technical supervision*.

3. Detecting the flagrant crime of corruption

The team for detecting the flagrant crime of corruption will be coordinated by the prosecutor and will be made up of police officers, police officers from the General Anticorruption Directorate, which represents the specialized structure of the Ministry of Internal Affairs for the prevention and combating of corruption among the personnel of the ministry, as well as forensic experts in the field of recording and interception communications. If the information comes from special information services, insofar as their specialists have the quality of criminal

investigation body, the personnel of these bodies will be co-opted into teams. Precise and clear tasks will be established for each member of the team, depending on the material competence of each (Moise, Stancu, 2017: 208). They will permanently transmit to the team manager the data they have.

In the process of the investigation of corruption offences, the flagrant detection team uses forensic traps.

The forensic traps are technical-scientific procedures that are used in the specially organized operations by the forensic investigation teams to apprehend the unidentified perpetrators of criminal facts and for which there are strong indications that they will be present in a certain place. (Duvac, Postolache, Lăpăduși, 2012: 68). The use of forensic traps in the field of combating corruption offences has a dual role: the preventive role, in the situation, in which by identifying the perpetrators, the committing of new corruption crimes is stopped; the repressive role, in the situation, in which the perpetrators are identified, caught and they have criminal liability for committing the corruption crimes (Moise, Stancu, 2017: 209).

In the process of the investigation of corruption offences, investigators use several types of forensic traps: chemical traps, optical traps and sound traps. Thus, the chemical traps use fluorescent and non-fluorescent chemicals that will come into contact with the offenders, and after their highlighting, the persons who were present at the place of committing the corruption offences will be identified (Buquet, 2011: 141-143).

The optical traps refer to the use of cameras for recording or video recording of offenders (Buquet, 2011: 93-98).

The sound traps refer to the use of audio recording devices where there are indications that the crime of corruption will be committed.

The actual conduct of the action of detecting the flagrant crime in the case of corruption crimes goes through the following steps (Moise, Stancu, 2017: 210-211).

3.1. Surveillance of the place where the offender will be surprised

Each member of the investigation team will oversee the areas or spaces and the people who were entrusted to him. They will constantly communicate with the leader of the investigation team, promptly informing him about what happened, about new, unanticipated elements that may affect the conduct of the flagrant corruption crime detection action, such as: sending by the author of the crime of some accomplices, with the message of giving them the money or the goods; sending the whistleblower to return the next day or to deliver the money to a specific address or bank account; the emergence of new people who want to offer money or goods.

In the case of the presence of the whistleblower, he will be instructed to make certain gestures through which to send messages to the forensic investigation team. It can also make video and audio recordings that can be used later in administration of evidence in criminal proceedings.

3.2. Effective implementation of the flagrant action in the case of corruption offences

Depending on the complexity of the action, the team of detecting the flagrant offence of corruption will choose the moment of the intervention, making sure of the effect of the element of surprise on the offender, which is a significant tactical element for the destruction of his defense system.

The forensic tactical rules to be followed at this time are as follows (Stancu, 2010: 753-754):

(I) Quickly enter the criminal space, so that the perpetrator cannot escape. If the space is open, all directions will be blocked, and if the space is closed, all access routes to doors or windows will be blocked. The members of the team, pre-established, will take care that the perpetrator does not destroy objects or money that are in sight or on him and that he does not try to kill himself.

(ii) The team leader and the other members must declare their identity, presenting the identity card so that all the people present can hear. At the same time, it is pointed out that any infringement brought to the representatives of the judicial bodies, constitutes the crime of outrage.

(iii) Identification of the civil servant, active subject of the crime based on the identity documents that he has on him. All data in the identity card will be retained.

(iv) Identification of all persons who are in that place and who could subsequently confirm or provide data about the activities carried out by the perpetrator, about goods and money, as eye witnesses. Until the end of the operation, these persons will remain at the crime scene for the hearing and for the signature of the flagrant action document.

(v) Conducting the author's body search. Before carrying out the body search, the perpetrator is recommended to declare what values or assets he holds and where they come from. Thereafter, the perpetrator is asked to remove the objects and values from his pockets and to give explanations regarding them, explanations that will be recorded in writing. In the case, that it will be found amounts of money or goods from possible similar facts, received on the same day, they will be recorded in the report.

(vi) The search of the whole space in which the offender was surprised. In the case, if it is considered necessary, the prosecutor can order a home search. The investigators will look for values or goods that can be used as evidence. In the case where forensic marked money or goods were found, the perpetrator will be asked if he/she has taken them and in what context. The documents, as well as some objects that apparently have no evidential value, will be analyzed and collected for possible connections with other materials. Before being picked up, the goods will be photographed, video recorded and carefully described in the report. At the same time, the place and position where the goods were found will be mentioned in the report (Volonciu, 1996: 379). Objects that are not subject to seizure can be handed over to the person to whom they belong to, with the obligation to keep them until the case is solved.

(vii) Notifying the offender of the right to be assisted by a lawyer. His hearing will be held on the crime scene, after all the other persons have been heard. The statement will include in detail the facts, the purpose pursued by the perpetrator, the persons who helped him, as well as all the aspects necessary to clarify the corruption crime (Mircea, 1998: 340-341).

Conclusions

We believe that the use of special investigation techniques in the case of corruption offences must be carried out in accordance with the fundamental human rights and freedoms provided by the European Convention on Human Rights, such as the right to privacy, and the jurisprudence of the European Court of Human Rights.

In our opinion, the detection of flagrant offences represents, in practice, the safest modality of proving corruption offences.

We also highlight the importance of the role of the forensic traps, as technical-scientific procedures in the process of the forensic investigation of corruption offences.

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