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## The agent in the slovak criminal law

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1 grudnia 2012



## Štefan Kočan - THE AGENT IN THE SLOVAK CRIMINAL LAW

### Abstract

In the literature we encounter different terms to label agents. Even national legislation does not use a single term. Most often we encounter the terms “covert investigator”, “secret police”, “undercover cop”, “secret agent”. Not only that, there is a single term to refer to the Institute in practice, the vast majority of states differently regulates the specific conditions of use. This results in a different situation and problems in the area of organized crime, which also determines the different police and judicial practice of the Institute. For these reasons, we find the world in different arrangements to solve this problem.<sup>14</sup>

**Keywords:** agent, agent provocateur, undercover agent

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<sup>14</sup>J Viktorjova, J. Blatnický,: *Methods of inquiry - the assessment of the current situation and possibilities for their further development. Proceedings of the professional work of professional appreciation course for investigators PZ held on 20 4th - 24 4th 2009th Bratislava, Police Academy, 2009, 133 p.*

## Abstrakt

W literaturze spotykamy różne terminy określające etykietę policjanta. Nawet ustawodawstwo krajowe nie używa jednego terminu. Najczęściej spotykamy się z określenia "tajna policja", "ukryty policjant", "tajny agent". W praktyce zdecydowana większość państw jednak odmiennie reguluje szczegółowe warunki stosowania tych terminów. Prowadzi to do różnych sytuacji i problemów w dziedzinie przestępczości zorganizowanej, które to określają również charakter działalności policji i sądów.

**Słowa klucze:** agent, prowokator, tajny agent

## Introduction

Effective control of crime and in particular its most serious control very sophisticated organized forms is a difficult task with which they are currently facing each state. Each country responds to solving problems associated with crime in another way, which results from the specific conditions of life of the society and the legal tradition of the country and belongs to security culture<sup>15</sup>. Every

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<sup>15</sup> M. Cieślarczyk, *Fenomen bezpieczeństwa i zjawisko kryzysów postrzegane w perspektywie kulturowej*, [w:] *Jedność i różnorodność. Kultura vs, kultury*, E. Reklajtis, R. Wiśniewski, J. Zdanowski (red.), ASPRA-JR, Warszawa 2010, s. 96, S. Jarmoszko, *Nowe wzory kultury bezpieczeństwa a procesy deterioracji więzi społecznej*, [w] *Jedność i różnorodność. Kultura vs, kultury*, E. Reklajtis, R. Wiśniewski, J. Zdanowski (red.), ASPRA-JR, Warszawa 2010; J. Piwowarski, *Bezpieczeństwo jako pożądaný stan oraz jako wartość*, [w:] *Bezpieczeństwo jako wartość*, Wydanie pokonferencyjne z II Konferencji Naukowej z cyklu „Bezpieczeństwo jako wartość” zorganizowanej przez Wyższą Szkołę Bezpieczeństwa Publicznego i Indywidualnego „Apeiron” w Krakowie, 18 kwietnia 2008, s. 56-57.

1 grudnia 2012

good and proven solution is then transferred to other countries. In this way starting with crime control and exercise new rights and resources. One of these in our still relatively new institutes used to control crime is the criminal process of the agent, which has become a modern and highly effective tool in the fight against corruption. Application of this institute requires high professional erudition persons involved in the implementation of the Institute, which is reflected in a comprehensive, focused and purposeful activities aimed to prepare to conduct the actual deployment of the agent and the time after termination agent.

### **The agent in the investigation of corruption offenses.**

The agent was first introduced or used in the Slovak Republic or the former Czechoslovakia. The origins of its use in the field of crime can be seen especially in the United States. With the exception of the U.S., ie mainly in European countries, we can talk about a relatively new criminal procedural Institute, under our conditions and means operative-investigative activity that is significantly involved in identifying and clarifying the most serious forms of crime and identifying the perpetrators and especially in cases where the use of other means, does not lead to the desired result. Introducing agent Institute in our legal system was associated with an extensive discussion on the necessity, eligibility and last but not the least, its constitutionality and legality. The huge boom in crime in the context of social change after 1989, however, brought the legislator considers the desirability of this institute. Law no. 247/1994 Coll, which amended the Criminal Procedure Act (Act no. 141/1961 Coll.) With effect from 1 January 1994, inter alia, for the first time in history to introduce new Slovak law the agent. The institute has undergone several changes and the adoption of the new Criminal Procedure Code no. 301/2005 is modified particularly in § 10 paragraph. 19 and 117 The legal conditions for the use of the

1 grudnia 2012

agent as a means of operative-investigative activities are governed by § 117th These legal conditions are:

- the existence of an exhaustive list of the crime - which include corruption,
- substantially impede the detection, identification and rebuking the perpetrator of the offenses differently(evidence)
- the existence of suspicion on the basis of experience gained in the enforcement of the commission of a crime offenders in the past or in the future<sup>16</sup>.

Using an agent is only possible on the basis of an order issued by the President of the Senate (in court), or an investigating judge (in the procedure before the prosecution or pre-trial). Issue an order to use the agent may exceptionally well prosecutor (in progress prior to prosecution or pre-trial) under the following conditions:

- it is an urgent matter,
- use Agent is not associated with entry into a dwelling of another
- not to use an agent under § 117, paragraph.

Validity of this order made the prosecutor is limited to 72 hours of its release, and this time it must be confirmed by the judge for preliminary proceedings, otherwise expires. The provisions of § 117, paragraph. 2 is a modified range procedure agent. In general it can be stated that the conduct of the agent to be generally consistent with the purposes of the Act as expressed in § 1 paragraph. 1 and should be proportional to the unlawfulness of the offender. Agent must proactively induce to commit an act. This arrangement is modified in the case of corruption, when it is

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<sup>2</sup>J. Ivor. et al., *Criminal procedural law*. Second, by a revised edition. Bratislava: IURA EDITION, 2010, p. 407 to 410.

1 grudnia 2012

admitted some form of initiative proceedings under the following conditions:

- suspected acts of corruption,
- suspect the foreign public official or public figure,
- justifiably expected crime suspects without abetting of crimes based on the findings. In legal terms this implies some form of influence offender in the case plan a legal character and corruption does not exclude direct involvement in the implementation of the agent perpetrator intends to commit an offense.

Agent acting under covert or without legend. Severity Institute agent is adapted to the rules of the hearing options. The pretrial hearing is entitled to make an agent prosecutor in the use of technical equipment for audio and video so that his identity not be revealed. Before the court is entitled to make the agent questioning the presiding judge, rarely, by using the technical equipment for the transmission of video and audio, with the eventual change in appearance and voice of an agent, or to the exclusion of the accused, the trustees and the public from the courtroom. Code of Criminal Procedure allows the court proceedings questioning the witness, who is president of the Police Force authorized officer of the Police Force, and the facts obtained agent. The Criminal Procedure Code provides that if an agent is a person other than a member of the Police or a police officer of another country and agrees that his identity has been revealed, were used for further proceedings provisions of the Criminal Procedure Code of the witness.

Agent may perform its tasks and in another country. This may be the action of the proceedings in another state or in the Slovak Republic. Prerequisite for this process is the approval authority of the State in whose territory the act and decision of the President of the Police (unless otherwise stipulated by an international

1 grudnia 2012

treaty). Factors relating to the crime unrelated to the case in which the agent used, may be used in other proceedings as evidence only if they relate to any of the offenses listed exhaustively in § 117 paragraph.

First literature distinguishes between "agent-provocateur" and "agent-controller". The agent controller and its application in practice in the investigation and proof of the corruption offenses does not more - not fewer problems. Possibilities and conditions of use secret agent deal with the XVI. International Congress of Penal Law, which in conjunction with the possibilities of using undercover Institute and other funding so. proactive investigations formulate basic requirements that must be met each case. These requirements are translated into several basic principles for which the European Court of Human Rights case law declared in more demand strict and absolute compliance.

**The principles:**

- a) the legality of using an agent - the agent rules Institute controller is included in § 117 Tr. well with the exception of those provisions relating to the agent provocateur, the specific principle of legality is covered through the above sections of the Act, are as follows at law the conditions and limits agent Institute enjoyment. Using agent (controller) can be regarded as legitimate, if they are in a particular case met all the conditions, the fulfillment of which the current rules of criminal procedure binds the possibility of its use,
- b) the agent uses subsidiarity - is expressed in § 117, paragraph. 1, second sentence Tr. Regulations, which is stipulated that the use of the agent is only possible in the case where the detection, investigation and convictions for crimes otherwise substantially impede,
- c) proportionality in the use of agent - Again, this institution may only be used in detecting, identifying and convicting the

1 grudnia 2012

perpetrators of the most serious crimes, which include corruption offenses

d) judicial review - is contained in several provisions of § 117 Tr. order in particular paragraph. 5 to 7, namely the definition of the range of entities that are authorized to issue an application agent (controller), the conditions which must be in addition to the general requirements include the design and also the command to use an agent, the agent uses time frame and also range entities be entitled to decide on the extension of already issued an order to use an agent.

Legislation agent controller meets the requirements set for its use internationally. In recent years, often occurring in the theory and practice of opinions that effective in the fight against corruption would be called exploitation. agent - provocateur. Already in the older literature, some authors analyze questions of criminal liability agent - provocateur.

Agent - provocateur was criminally liable under the Criminal Code for crimes, offenses and misdemeanors no. 117 of 27 May 1852, where the provisions of § 9 stated: someone who calls to some crime, encourages, challenges, commits, if it was not the result of action, not consummated seduction of this crime and may be sentenced to a penalty which should be saved as an attempt of crime<sup>17</sup>.

Institute uses the agent must be associated only with that limited the rights that are necessary for the purpose of detecting and proving a particular crime. It is also necessary to respect all the basic principles of criminal proceedings, particularly the principle of proportionality and restraint. Due to the nature and character of the Institute through an agent it is possible to obtain information

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<sup>17</sup>B. Repík, *The European Convention on Human Rights and Criminal Law. I. issue*, London: ORAC, 2002, p. 199 et seq.

1 grudnia 2012

relevant to criminal proceedings as well as the people who take part in it.

Agent operates in the criminal environment in which it obtains information relevant to criminal proceedings. Thus, the information may not always have direct evidence on the importance of a particular matter to which the application relates agent, but can fact-finding focus in the right direction of the police procedural and action by law enforcement agencies Slovak criminal procedural treatment of the Institute, namely § 117 TP distinguishes agent controller (§ 117 paragraph. 1 TP) and agent provocateur (§ 117 paragraph. 2 TP). Issues, opportunities and contexts of use of a secret agent Institute dealt XVI. International Congress of Penal Law. In its conclusions, said that the use of agents and resources so similar. proactive investigation is possible, but must be made subject to a number of principles. In this context, it was expressed:

- a.) the principle of legality (legality) using the agent
- b.) the principle of subsidiarity,
- c.) the principle of proportionality and
- d). principle of judicial review.

Strict and consistent application of the principles declared in several of its decisions and the ECHR. Principle of legality is filled by establishing § 117 TA, which governs the agent and the conditions of its use. The principle of subsidiarity is directly expressed in § 117, paragraph. 1 TP, which states that the use of this institute is only possible if the detection, investigation and convictions a specified range of offenses otherwise much more difficult. Thus, the primary purpose of these are used by other law enforcement agents. Only in the event that their use would be to detect, identify and convictions substantially more difficult, appropriate use of the Institute's agent. This provision is also expressed in the principle of proportionality agent Institute, since its use is possible only in the most serious forms of crime. The agent

1 grudnia 2012

can be used only when it comes to detecting, identifying and convictions of crimes, corruption offenses, the offense of money laundering and abuse of office. Use of this institute is only possible if the already acquired knowledge is justified suspicion that he has committed or has yet to happen to commit any of the offenses specified range. The question of conflict with fundamental human rights are dealt with primarily by the general basic principles of criminal proceedings. This is particularly the principle of proportionality and restraint in which the competent authorities shall proceed to the fundamental human rights and freedoms of persons with whom they come into contact, interfering only to the extent that is necessary to achieve the purpose of the act and the criminal proceedings. Always and in all circumstances be obliged to do so in order to preserve human honor and dignity respected and all basic human rights. Guarantee the protection of fundamental human rights are made a requirement for strict compliance with the conditions of use of this institute and the group of entities that may issue an order to use it. Last of the expressed principles, the principle of judicial review, is expressed in § 117, paragraph. 5 to 7 TP by:

1. among the bodies authorized to issue an order to use agen
2. circuit design requirements for an order
3. time horizon for which the use of the agent bound
4. range of bodies authorized to decide on the extension originally issued the order to use the agent, if necessary, as well as the length of the extension and
5. particulars of the order itself<sup>18</sup>.

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<sup>18</sup>V. David, A. Nett, *Corruption in international law, European and Czech*, London: C.H.BECK, 2007, p. 294.

1 grudnia 2012

Activity of the agent (controller) must also meet several other requirements. The first is to comply with TP, which is the proper detection of offenses and their perpetrators to justice so as to be simultaneously respected human rights and fundamental freedoms (§ 1 TP). Activity agent also must be commensurate with the seriousness of those crimes, detection, investigation and convictions which the agent involved. At the same time, however, the agent (controller) may induce the initiative to commit the offense. For the purpose of entering into a particular criminal environment and performance of its functions, it is permanent or temporary cover provided information about his identity, marital status, education, employment and so on. (The legend), under which acts and which serves to protect it. Legislation agent - provocateur is contained in § 117, paragraph. 2 TP. On the basis of this legislation is in relation to a particular range of criminal offenses and the specific range of people possible, according to our criminal process modifications and proactive solicitation to commit an offense under the condition that the facts indicate that the offender committed the offense without being an order to use the agent. The scope of the offenses covered by the suspicion that may include all corruption offenses, as provided in III. work VIII. Head of Special TZ. Group of persons in respect of whom can benefit from this institute is composed of public officials and foreign public officials. Range of offenses and the entities to which such provocation may be, is so significantly reduced. Use of the Institute's agent - provocateur is therefore according to Slovak legislation possible. Its use is ex lege bound to meet three cumulative conditions, which we include suspicion of corrupt offenses relating to the domestic or foreign public official with the previously established facts must show that corrupt crime would be committed, even if the order to use the agent was released.

1 grudnia 2012

### **Conclusion**

Issues of police provocations are generally very delicate problem. Police provocation is, usually secret police procedure, which results in an action (act) committed by a person who has become the subject of a subsequent criminal prosecution or to be the subject of the prosecution was to become. "Police provocation on the case thus occurs when the Police know that a particular person would, under certain circumstances, to commit the crime, and for this purpose are the terms and conditions established for the commission by a third party (the agent). This work is a thorough documentation of the course, since information thus obtained is in the nature of criminal proceedings accorded evidence. Of course, in this case refers subsequent legislation on the range of bodies that decide on the issuance of an order to use this institution, the substrate on which the command is issued for the use of the agent, the time flexibility of use, rules for the extension of the order to use the agent and requirements of this order (§ 117 paragraph. 5-7 TP).

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