

Eligibility of Evidence Provided by the Order for Covert and Technical Measures of Surveillance and Investigation by the Code of Criminal Procedure of the Republic of Kosovo

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Abstract

- Proof of unacceptable - Offenses for which allowed observation and undercover investigation - Review of the admissibility of evidence - Panel for review of surveillance and investigation - Complaints against illegal measure To find the truth in a case of criminal justice, it is important to ensure that evidence obtained by secret order and technical measures of surveillance and investigation are acceptable. There will succeed finding the truth, if the evidence provided in contradiction with the provisions of the Code of Criminal Procedure of the Republic of Kosovo. At every stage of the procedure, but before the judgment it becomes final, could be considered the admissibility of evidence. When the order to ensure evidence is declared illegal, on the request of the person undergoing technical measure of secret surveillance and investigation, to decide his compensation Review Panel observation and investigation. Even at this stage of the procedure, the person who is the subject of the order for covert and technical measures of surveillance and investigation, has the right to file a complaint with the competent court president basic.

Keywords: evidence, acceptability, unacceptability, panel, appeal.

1. Method and Objectives

The style of the paper is of the nature of the analytic interpreting of the situation by using the methods: comparative, descriptive, which is made specific literature review on the subject doing the examination of the Criminal Procedure Code and the legislation in force related to this theory. Initially analysis was done in criminal legal aspect, in terms of material object, typology of subjects, comparative aspect, criminological, policy prosecution and sanctioning policy.

During work I used research methods and techniques combined as follows: historical method, comparative, legal, comparative and empirical observation. Through historical method, we handle rise the concept of the secret orders for inquiry, the law of evidence in the process, their dynamics in Kosovo criminal legislation, standards and the contemporary principles.

The objectives of the research stay in the elaboration of the admissibility of evidence from undercover investigations, analyzing these cases, the legal elaboration and their subjective.

2. The Evidence of Unacceptable

Not every time the evidence provided by the order for covert and technical measures of surveillance and investigation, are acceptable and so the investigation stage process may be failing at the beginning, but the final judgment cannot be based on evidence unacceptable, otherwise even such judgment shall be annulled by the appeal proceedings by the court of second instance.

According to the Criminal Procedure Code of the Republic of Kosovo, (KPPRK) provided evidence for the order amongst procedure covert and technical measures of surveillance and investigation are unacceptable if the order is unlawful¹.

¹ Article 97 paragraph 1 of the Code No. 04 / L-123 of Criminal Procedure of the Republic of Kosovo, in force from dt.01.01.2013, Official Gazette of the Republic of Kosovo No.37 of dt.28.12.2012.

3. The Offenses for which Permitted Surveillance and Undercover Investigation

KPPRK's, provides that evidence obtained for almost secret monitoring of conversations in private places, search of postal, telecommunications interception, interception of communications by a computer network, controlled delivery of postal items, using the means for monitoring the location, simulating the purchase of an item, the simulation of a corruption offense or an undercover investigation, are permissible in criminal proceedings for offenses punishable by imprisonment may be imposed of at least 5 (five) years or more many years in prison and the following²: violence against senior representatives of the Republic of Kosovo; endangering the constitutional order the destruction or damage to installations and public equipment; sabotage; espionage; Failure harbouring terrorists or terrorist groups; preparation of terrorist acts or crimes against the constitutional order and security of the Republic of Kosovo; Endangering the negotiators; organizing groups of committing genocide, crimes against humanity and war crimes; hijacking of aircraft; jeopardizing the safety of civil aviation; slavery, slavery-like conditions and forced labour; smuggling of migrants; trafficking in persons; concealment of documents identifying victims of slavery or trafficking; endangering persons under international protection; endangering United Nations staff and personnel in relation to them; taking of hostages; threatening to use or commit theft or robbery of nuclear material; abduction; torture; violation of the right to run; candidate threat; misuse of official duty during the elections; Giving or receiving bribes in connection with the vote; falsification of voting results; destruction of ballot papers; rape; sexual services of a victim of trafficking; enabling or liability in prostitution; and trafficking illegal transplantation of human organs and cells; contamination of drinking water; contamination of food items used by humans or animals; purchase, possession, distribution and sale of narcotic drugs, psychotropic substances and analog; unauthorized production and processing of narcotics, psychotropic substances, analog or tools, equipment or materials drugs; organization, management or financing of trafficking in narcotics or psychotropic substances; violation of equality in the exercise of economic activity; misuse of economic authorizations; forgery of securities and payment instruments; organization of pyramid schemes and illegal gambling; counterfeit money; production, supply, sale, possession or leasing of vehicles for forgery; money laundering; agreements restricting competition through invitations to tender; fraud in exchange of securities; agreement and securities fraud Government; Tax Evasion; unreasonable acceptance of gifts; Gift giving unreasonable; smuggling of goods; avoidance of compulsory fees customs; arson; fraud; fraud with subsidies; fraud recipients of funds from the European Community; misuse of insurance; access to computer systems; keeping illegal substances and hazardous waste; import, export, supply, transport, production, exchange, mediation or unauthorized sale of weapons or explosive substances; one or more of the following offenses if committed in relation to terrorism, corruption and organized crime; intimidation; bullying; attack; serious bodily injury; shaking; liability; blackmail; causing general danger; destruction, damage or removal of public installations; destruction, damage or removal of protective equipment and security risks in the workplace; dispatch or transport of illegal explosives or inflammable materials; use of a weapon or dangerous device; obstruction of proving or official proceeding; intimidation during criminal proceedings for organized crime; abuse of power or official authority; misuse of official information; conflict of interest; acquisition of duty; fraud task; taking bribes; bribes; bribes to foreign public official; exercise of influence; disclosure of official secrets.

Thus the evidence provided in accordance with the measure ordered in conformity with Article 88 of KPPRK's, are admissible in judicial review, regardless of whether or not included in the indictment for criminal offenses listed in Article 90 of KPPRK's .

4. Review of the Admissibility of Evidence

After the indictment by the State Prosecutor, the defendant may be contradicts the evidence collected, and if the complaint is filed before the second reading, and on the admissibility of evidence contested only judge of the court or the presiding judge³, the on the other hand the court's decision rejecting the evidence may be appealed court of second instance.

At every stage of the criminal proceedings before a verdict pora it becomes final, panel judge or the presiding

² Article 90 of the Code No. 04 / L-123 of Criminal Procedure of the Republic of Kosovo, in effect pre dt.01.01.2013, Official Gazette of the Republic of Kosovo No.37 of dt.28.12.2012.

³ Paragraph 3 of Article 97 of the Code No. 04 / L-123 of Criminal Procedure of the Republic of Kosovo, in force from dt.01.01.2013, Official Gazette of the Republic of Kosovo No.37 of dt.28.12.2012.

judge on the basis of legal powers of ex officio may review the admissibility of evidence collected materials, which are provided in conformity Article 88 of KPPRK's, to assess if they are violating the constitutional rights of the defendant, if there are indications that the materials or evidence provided illegally.

Regardless of which stage in criminal proceedings, when the decision on the illegality of the order or its implementation becomes final, the single judge or the presiding judge panel who directs criminal procedure removes all material collected from the record and materials such sends Review Panel Survey and Investigation by the president of the basic court for decision on compensation.

5. Panel to Review the Surveillance and Investigation

Review Panel Survey and Investigation, is competent to decide on the appeal in accordance with paragraph 5 of Article 98 of KPPRK, regarding the measure or order, and decide for compensation, and decide on compensation for the or persons who are subject to an order for monitoring and undercover investigation, when the judge on the basis of legal powers under paragraph 3 of Article 97 of KPPRK's, has issued a final decision by which it declared that the order or his application was unlawful.

Panel Review of Surveillance and Investigation⁴, the president of the court appoints basic and it consists of the jury of three judges, who has legal authority to decide on concrete complaint or for compensation on the basis of the decision issued pursuant to paragraph 3 of Article KPPRK 97's. Members of the Review Panel Survey and Investigation, would not have been professionally connected with the person subject to appeal or materials-testing which is determined in accordance with paragraph 3 of Article 97 of KPPRK's.

Review Panel Survey and Investigation, documents that require to perform its duties, it provide authorized officers of the police and the State Prosecutor, always at the request of the panel mentioned bodies provide oral statements.

When the judge's decision becomes final, in which it announced an order for its enforcement measure or unlawful, the decision in question is binding on Review Panel Survey and Investigation⁵.

6. An Appeal Against the Measure Illegal

In case the person has been subjected to mass surveillance and investigation⁶, considers that has been subjected to a measure or an unlawful order, it has the right to lodge a complaint to the president of the basic court, which if satisfied that there is no legal violation , basic court president appoints Review panel Survey and Investigation to decide.

If the Review Panel Survey and Investigation estimates that the measure or order is unlawful, he may decide to terminate an order if it is still in force, to order the destruction of the collected materials, and to compensate the person or persons who have undergone order⁷.

In order amongst measures taken for observation and investigation procedure succeeds, the police as competent for execution of the measure has the right and may, as appropriate, seek the assistance of other bodies responsible for implementing the law and order and a secure environment in Kosovo regarding the implementation of measures issued, all with the purpose of detecting and identifying the perpetrators of the crime.

KPPRK legal provisions, but without prejudice to the powers of the officials under applicable law, apply to the implementation of surveillance and investigation when providing customs and other related services.

I believe that only the successful implementation of legal provisions KPPRK, regarding the implementation of measures for monitoring and investigating the secret, we will have success in finding the perpetrators of the offense, and his judgment by the court.

If there is a breach in the procedure of issuance and implementation of the measures of surveillance and investigation, then such evidence would have been obtained contrary to the natural law and the court will announce

⁴ Paragraph 2 of Article 98 of the Code No. 04 / L-123 of Criminal Procedure of the Republic of Kosovo, in force from dt.01.01.2013, Official Gazette of the Republic of Kosovo No.37 of dt.28.12.2012.

⁵ Paragraph 4 of Article 98 of the Code No. 04 / L-123 of Criminal Procedure of the Republic of Kosovo, in force from dt.01.01.2013, Official Gazette of the Republic of Kosovo No.37 of dt.28.12.2012.

⁶ Paragraph 5 of Article 98 of the Code No. 04 / L-123 of Criminal Procedure of the Republic of Kosovo, in force from dt.01.01.2013, Official Gazette of the Republic of Kosovo No.37 of dt.28.12.2012.

⁷ Paragraph 6 of Article 98 of the Code No. 04 / L-123 of Criminal Procedure of the Republic of Kosovo, in force from dt.01.01.2013, Official Gazette of the Republic of Kosovo No.37 of dt.28.12.2012.

unacceptable, and the entire case will fail, and therefore spite of the fact that the unknown perpetrator, the same will be released, because can not support the verdict based on the evidence inadmissible.

7. Conclusions

1. Law enforcement authorities such as police, prosecutors, courts and other bodies are obliged during the procedure of implementation of any measure or order, for the implementation of surveillance and investigation to comply with the law.
2. Police and prosecutors, in cooperation with one another, should when to initiate the case for the implementation of surveillance and undercover investigation, to ensure to the extent of that eventually, not to interfere with the rights and freedoms.
3. When deciding on the prosecutor's request for the issuance of a measure or an order for monitoring and undercover investigation, the court must be satisfied and has the task, since the prosecutor to request information as convincing, and only if satisfied that without application of the measure or order for observation and investigation secret, will not succeed disclosure of criminal perpetrator, itself then decide on the issuance of a measure or an order for the implementation of surveillance and undercover investigation.
4. When you happen to measure or order to implement surveillance and undercover investigation, turns out to be unlawful, the person who is subject to these measures should be compensated in accordance to the Law.
5. In the case where the application of the measure of secret surveillance and investigation, has not proven successful because the person against whom the measure of the surveillance and undercover investigation, has not been found as the perpetrator, it should be informed that the measure has been under surveillance and undercover investigation.

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