

# Special Evidentiary Actions in the Function of Combating Organized Crime in Serbia

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## Abstract:

*The effectiveness of preventing and combating organized crime, as well as the efficiency of criminal procedure, depends on many objective and subjective factors, but it is certain that their performance is much influenced by the previous criminal proceedings. In previous criminal proceedings authorized criminal procedural subjects, the public prosecutor and the police above all, take the law provided actions aimed at detecting and proving criminal offenses. However, the traditional evidence collection are not effective when it comes to combating organized crime, so that is why it is necessary for state to use modern technological and scientific advances to adequately confront it. So, the subject of this study are special evidentiary actions in the Republic of Serbia, which may be applicable in certain cases, above all, when it comes to organized crime offenses. So, we will first give a brief overview of the concept of organized crime, both in international and in national legal framework of the Republic of Serbia, and then we will analyze the special evidentiary action by the Code of Criminal Procedure of the Republic of Serbia: Secret surveillance of communications, secretly monitoring and recording, simulated activities, computer data search, controlled delivery and the undercover agent. Special attention will be paid to the issue of the distribution of responsibilities in terms of who can do a particular special evidentiary action, analysis of legal standards and conditions for their determination, with special emphasis on their probative value in the criminal proceedings.*

**Keywords:** *special evidentiary actions, organized crime, the Code of Criminal Procedure, the public prosecutor, the court, the police.*

## 1. General review on the concept of organized crime

Since the theme of this work is focused on the efficiency of special evidentiary actions in combating organized crime, it is quite logical and scientifically justified to present a brief overview of the essential contents of organized crime.

In relation to the definition of organized crime, it is important to point out that on the national and international level there is still no universal definition of the term, but also there are many definitions of the concept of organized crime. There are different approaches of authors in defining the concept of organized crime, some of them argue the essential elements of concept of organized crime, while others try to make one

general formulation. According to one of the definitions<sup>1</sup> the content of the concept of organized crime including the following elements:

- organization and cooperation of more offenders;
- use of violence and corruption to facilitate the exercise of their activities;
- concealment of criminal activities through legitimate business activity and corporations;
- the main objective of the organization is to obtain profits;
- transnational character is because such activity is carried out on the territory of several countries.

The following definition provides the following elements as necessary for organised crime to exist:

- criminal organization as an association of several persons;
- the secret character of criminal organizations;
- written or unwritten rules of a criminal organization including a description of the conditions in which it works and the rights and duties of its members;
- goals of criminal organizations (profit-making, monetary gain, achieve power);
- commission of criminal offenses;
- hierarchical structure of criminal organizations;
- illegal activities are carried out in a professional manner;
- members of criminal organizations are professionals;
- privacy of criminal organizations;
- monopolistic tendencies of criminal organizations;
- non-ideological character of criminal organizations;
- the use of violence;
- corruption operations;
- international organized crime operations;
- acceptance of a variety of technological innovations.

Organized crime involves the inclusion of several interconnected persons with a hierarchical organization whose main goal is getting rich and gain power, which is why it includes the illegal but also legitimate businesses that make significant profits with less risk that criminal activity be discovered, with what criminal organizations seeking to neutralize any form of competition in order to maintain a monopoly in certain segments of criminal activity, not hesitating bribery also.<sup>2</sup>

In order to facilitate the realization of international cooperation in combating organized crime, Interpol has twice offered a definition of organized crime. The first definition, which was presented in 1988 at the First International Symposium on organized crime was met with disapproval of some countries, so it is followed by a new definition of Interpol, according to which organized crime is any group that has the structure of the corporation, whose primary goal is to exercise illegal activities obtain money and which is held on intimidation and corruption.<sup>3</sup>

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<sup>1</sup> Savona, E., Adamoli, S., & Zoffi, P: *Organized Crime Across the Borders: Preliminary Results*, HEUNI papers no. 6, The European Institute for Crime Prevention and Control, affiliated with the United Nations, 1995, Helsinki, Finland, p. 5.

<sup>2</sup> Abadinsky, H: *Organized Crime*, Boston, 2000, p. 21.

<sup>3</sup> Bakesley, C: *The Criminal Justice Systems Facing the Challenge of organized crime*, RIDP/IRPL, no. 3, 1996, p. 585.

Regardless of present certain differences among the authors in defining organized crime, there is a general agreement of most of the authors in relation to the four basic elements of organized crime:

- permanent organization,
- organization which works rationally for profit,
- use of force or threat,
- the need for corruption to preserve immunity from the application of law.<sup>4</sup>

Organized crime must have mechanism of self-protection, because it guarantees criminal activity and its survival, so that is why it use methods of violence and intimidation, or why it establishes criminal links with government bodies, political parties, financial and economic systems, where the most frequently used is corruption. The role of the state and its organs, political parties and other important subjects is not negligible in relation to the operation and protection of organized crime and there are different understandings with respect to the necessity of protecting organized crime by establishing such connections. In any case, a criminal organization that has established appropriate relationship with the state has a certain degree of protection and as such is recognized in respect of those criminal organizations that do not have such protection.

At this point, we will mention a brief but fairly precise definition of organized crime, according to which this type of crime is property crime, and is characterized by the existence of a criminal organization that performs continuous economic activity, use the violence and corruption of office holders.<sup>5</sup>

In any case, for the purpose of this work is fully acceptable definition of organized crime that presupposes the existence of a criminal organization if it has more than two members, with the goal of permanent commission of criminal offenses in order to achieve material gain, and the corresponding influence, provided that this criminal organization, in order to survive, it is necessary to use violence or other means of intimidation or to establish appropriate linkages to national, political, economic and financial subjects, with corruption, blackmail, extortion or other.... These are precisely the ways that allow the survival of organized crime, according to the present social conditions, character, organization and areas of criminal activity. All other terms and conditions outline the nature and specifics of organized crime, completing its content, but they are not of significant influence for its existence.<sup>6</sup>

Bearing in mind this diversity in terms of defining of organized crime, it was necessary to take certain actions at the international level in order to define organized crime in a universal, generally acceptable way. Also, in order to deal with the organized crime and to harmonize the activities of state and create legal mechanisms for the international fight against organized crime, the United Nations has brought the Convention against Transnational Organised Crime <sup>7</sup> with its two additional Protocols: "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women

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<sup>4</sup> Albanese, J. S: *The Causes of Organized Crime: Do Criminals Organize Around Opportunities for Crime or do Criminal Opportunities Create New Offenders?*, Journal of Contemporary Criminal Justice, 16(4), 2000, p. 411.

<sup>5</sup> Ignjatović, Đ., Škulić, M: *Organised crime*, Faculty of law of the University of Belgrade, 2012, p. 28.

<sup>6</sup> Bošković, M., Vučković, V., & Bošković, D: *Basics of Criminology*, Faculty of Business Management, Bar, 2007, p. 326.

<sup>7</sup> The Convention was adopted in 2000 in Palermo, and the Republic of Serbia had ratified in 2001 (Official Gazette of the FRY - International Agreements ", no. 6/01, p. 20-39).

and Children”, and “The Protocol against the Smuggling of Migrants by Land, Sea and Air”.

From the point of theme of this work is important to emphasize that the Convention defines an organized criminal group as a group consisting of at least three persons, existing for a period of time and acting together with the aim of committing one or more serious crimes or other offenses, in order to gaining financial or material benefit. Serious crime is characterized as a criminal offense punishable by imprisonment of four years or more (art. 2, para. 1, n. a, b of the Convention).

Given the fact that the Republic of Serbia ratified the mentioned Convention, we can conclude that in the context of national legislation it fully taken above definition of organized crime. The definition of organized crime in the Republic of Serbia is located in two laws: the Law on organization and jurisdiction of state authorities in fighting organized crime, corruption and other very serious crimes (art. 3) and the Criminal Procedure Code.<sup>8</sup> (art. 2, para. 1, t. 33-34 ). In both of these laws definition is entirely taken from the Convention so at this point we will not repeat it, and in this way the Serbian legislation is fully in line with the ratified Convention.

## 2. Special evidence collection in Criminal Procedure Code of the Republic of Serbia - general considerations

Special evidentiary actions are in chapter VII in CPC of Serbia, entitled “The evidences”, art. 161-187. Use of special evidentiary actions may occur in the entire previous procedure, except for the provisions concerning the examination of the undercover agent as a witness. It is very important to say is that the results of such actions taken can be used as evidence in criminal proceedings if the action is taken in accordance with the provisions of the CPC. Otherwise, court decision can not be based on the gathered evidence. CPC of the Republic of Serbia provides six special evidentiary actions: surveillance of communications, secret surveillance and record, simulated activities, computer data search, controlled delivery and undercover agent.

In the UN Convention against Transnational Organised Crime, special evidentiary actions are called “special investigative techniques” and provides their application if its permitted by the basic principles of the domestic legal system of the signatory countries, in the framework of the possibilities of each country and under the conditions laid down in its legislation. Each state, where it considers it appropriate, will use special investigative techniques such as electronic surveillance or other forms of surveillance and undercover operations by the competent authorities in its territory for the purposes of efficient detection of criminal acts of organized crime.

In the approval and implementation of special evidentiary actions certain powers has the public prosecutor, the judge for preliminary proceedings and police, provided that if the special evidentiary actions are carried out in accordance with the provisions of the CPC, collected evidence and materials can be used as evidence in criminal proceedings. In this context it is important to draw attention to the resolution which was adopted in 1999 at the XVI Congress of the International Association of Criminal Law and according to which the material obtained by using special investigative techniques can be used as evidence in criminal proceedings only on condition that these techniques are undertaken by applying the principles of legality, subsidiarity,

<sup>8</sup> „Službeni glasnik of the Republic of Serbia“, br. 72/11, 101/11, 121/12, 32/13, 45/13 i 55/14.

proportionality and judicial control.<sup>9</sup> Special evidentiary actions have a legally defined time limit in which they have to be implemented, provided that, at the request of the prosecutor, can be extended in accordance with the law specified period. Sensitivity of special evidentiary actions and other special funds for the fight against organized crime are identified in the fact that they can easily get to their misuse and conflict with universal rules of fundamental human rights and freedoms of citizens who are today's introduced in constitutions of many democratic states as the value of the highest character. For adequate national legislation, when it comes to special evidentiary actions, it is necessary to mention Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees the individual's right to private and family life, respect for home and correspondence. Therefore, it is very important law of the European Court of Human Rights, which argues that the entitlement, provided art. 8 of the Convention, must be weighed against the restrictions imposed to protect other members of society. Otherwise, if there was a violation of privacy, the defendant may request that such evidence be excluded from the files because it is illegal evidence.<sup>10</sup>

There are a number of common characteristics for all special evidentiary actions. First, the special evidentiary actions may be determined by a person for whom there are grounds for suspicion of committing a criminal offense for which the Code prescribes that may determine special evidentiary action, and that is not otherwise possible to collect evidence for prosecution or to their collection would be very difficult (Art. 161, p. 1). Exceptionally, special evidentiary actions may be ordered against a person for whom there are reasonable grounds to prepare some of the offenses for which the Code prescribes that can be determined by a special evidentiary action, if the circumstances indicate that the otherwise criminal act would not be detected, prevented or proved or it would cause disproportionate difficulties or a great danger. Finally, under consideration of the conditions that must be met in order to determine some of the special evidentiary actions, it is necessary to say that in deciding on the definition and duration of special evidentiary it must be measured whether the same result could be achieved in a way that is less restrictive to the rights of citizens.

Bearing in mind the above, we can see that the special evidentiary actions equally important in the field of prevention and in the field of combating organized crime. In the field of prevention of organized crime are important because they can be ordered against a person for whom there are reasonable grounds to believe that that person prepare any of the criminal acts of organized crime and is therefore possible to prevent it, and to prevent commission, while in the field of combating it is significant because it can be determined when there are grounds for suspicion that a person has committed a criminal act of organized crime and in this way you act repressively.

A further common feature relates to criminal offenses in respect of which the special evidentiary procedures can be used. First, the special evidentiary action can be determined for the offenses in jurisdiction of the public prosecutor of special

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<sup>9</sup> De La Cuesta, J.L. (ed.), Resolutions of the Congresses of the International Association of Penal Law, XVIth International Congress of Penal Law (Budapest, 5-11 September 1999), *Topic: The Criminal Justice System Facing the Challenge of Organized Crime*, p. 10. <http://www.penal.org/pdf/ReA-IDP2007/RICPL%201999.pdf> dostupno dana 10.06.2008. godine.

<sup>10</sup> Bošković, A: *Police actions in the previous criminal proceedings*, Institute for Criminological and Sociological Research, 2015, p. 151-152.

jurisdiction, ie. The Prosecutor's Office for Organized Crime and War Crimes Prosecutor, and for a series of other criminal acts that are enumerated in the CPC.<sup>11</sup>

Further, the material collected using special evidence procedure must be used in a specific legal deadline, ie. if the public prosecutor does not initiate criminal proceedings within six months from the day when he met with such materials or if it declares that it will not be used in the process, and that the suspect will not face proceedings, the preliminary hearing judge will issue a decision to destruct the material collected. The requirement that the material collected in this way has probative value and that a judicial decision can be based on it, is that the implementation of special evidentiary actions were not taken contrary to the procedural provisions

When it comes to the issue of the so-called. "accidental discovery", the Code provides that if the undertaking of special evidentiary actions collected material about the offense or the offender that was not covered by the decision on the determination of special evidentiary actions such material can be used in the procedure only if it relates to an offense for which the Code provides special evidentiary actions (art. 164).

Finally, the application of special evidentiary actions requires confidentiality procedures so that all information on the proposals, decision-making and implementation of special evidentiary actions are considered as confidential information and all persons who has that informations are obliged to keep them as secret.

### 3. Secret surveillance of communications

Secret surveillance of communications is a special evidentiary action consisting in monitoring and recording of communication that is done through telephone or other technical devices or electronic surveillance or other address of the suspect and the seizure of letters and other parcels (art. 166). Može se primetiti da tajni nadzor komunikacija obuhvata tri aspekta. It can be noticed that in the secret surveillance of communications there are three aspects. First, it refers to the monitoring and recording of communication that is done through telephone or other technical devices and that usually means tapping ordinary telephone calls, but it can apply to any other means of communication: mobile phones, payphones, fax, email, radio, etc., but you can't apply to an communications of the accused and his counsel. Second, the secret surveillance of communications involves monitoring of electronic or other address. That legalized actions of authorities in practice, since the monitoring of electronic address is already done and it's used as evidence in the proceedings for some time. This probably refers to passively intercept communications, although this is not specified by law. It is not clear what is meant when it comes to "other address", but it is possible that the legislator has put into law this general norm trying to ensure the permanent tardiness of legislation comparing to technological changes, and so avoid possible legal gaps (*lacuna iuris*) so that may occur in practice.<sup>12</sup> And third, this action involves the seizure of letters and other consignments.

<sup>11</sup> In addition to cases of organized crime, special evidentiary actions can be defined for the offenses of aggravated murder, kidnapping, robbery, extortion, counterfeiting money, illicit production and trafficking of narcotic drugs and other crimes enumerated in Art. 162 of the CPC.

<sup>12</sup> Radisavljević, M., Četković, P: *Special evidentiary actions in the prosecutorial investigation in Serbia*, Prosecutorial investigation – regional criminal procedure legislation and experience in its application, Mission of OEBS in Serbia, Belgrade, 2014, p. 173.

When we analyse these provisions it may be noted that the Serbian legislator does not provide monitoring and recording other conversations than just conversations conducted by telephone or other technical devices. In fact, it excluded the possibility of monitoring and recording of direct verbal conversation, *i.e.* conversations that are not carried out by telephone or other technical devices. In this way there is no legal basis for recording room acoustics or sounds made vehicles of the suspect. That is possible only with undercover agent and that will be discussed later. We believe that such a legal solution is not the best because these facilities are one where unauthorized trafficking in narcotic drugs are happening in, where the perpetrators of crimes and their accomplices have meetings, or where they are preparing new crimes.

Secret surveillance of communications shall be determined under the fulfillment of the general conditions common to all the special evidentiary actions, what was already been discussed. However, the CPC stipulates that the measures of secret surveillance of communications can be determined for some other crimes, for which otherwise can not be determined any other special evidentiary action. Specifically, it is about cybercrime criminal acts. and it's sure that, considering the specific characteristic of these offenses, measures of secret surveillance of communications are fully adequate.<sup>13</sup>

The important question is, who is competent to order this special evidentiary action? The Serbian legislator explicitly states that the surveillance communication is ordered by a judge for preliminary proceedings after the reasoned request of the prosecutor. So there is no possibility that in case of emergency, or a risk of delay this measure is ordered by public prosecutor. Such a legal solution is fully in line with the European Court of Human Rights<sup>14</sup> so it can be concluded that it is necessary that a final decision on the application of secret surveillance of communications is in the hands of the court.<sup>15</sup>

Furthermore, the secret surveillance of communications may last three months, and if there is need for further evidence gathering it can be extended for another three months. Exceptionally, for offenses in jurisdiction of Prosecutor's Office for Organized Crime and War Crimes Prosecutor's special evidentiary action may be extended twice in a period of three months. It actually means that the action of secret surveillance of communications in proceedings for offenses for which is competent prosecutor's office of special jurisdiction can last up to a year.

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<sup>13</sup> These are the following criminal offenses: unauthorized use of copyright works or subject matter of related rights (Art. 199 CC), damage to computer data and programs (art. 298, para. 3 CC), computer sabotage (Art. 299 CC), computer fraud (Article. 301, para. 3 CC) and unauthorized access to a protected computer, computer network and electronic data processing (Art. 302 CC).

<sup>14</sup> Some decisions ECHR are accepted as reference in this matter. In particular, we have verdicts *Malone vs UK* (where it was determined that collecting information on telephone numbers dialed, time and length of calls fall under the concept of communication), and *Copland vs UK* (which specifies that the notion of privacy and correspondence includes not only telephone communication, but also e-mail and Internet use), but also in verdict *Kruslin vs France* (which is of importance for the prevention or postfestum supervisory role of the court in cases of surveillance and recording of communications) – quoted from Ivanovic, Z., Banović, B: *Analysis of legal regulation of communications and the European Court of Human Rights*, Security, LIII(1), 2011, page 104-105.

<sup>15</sup> In Germany and Italy there is a legal possibility that in cases of urgency secret surveillance of communications, orders public prosecutor, but it is essential that such a decision is brought in a very short time (48 hours or three days) certificate by the competent judge - read: Boskovic, A: *The actions of the police in the previous criminal proceedings and their probative value*, Institute for Criminological and Sociological Research, 2015, p. 160-161.

Secret surveillance of communications is executed by authorized police officers, Security Information Agency (SIA) or Military Security Agency (MSA), and the postal, telegraph and other organisations registered for transmission of information are required to allow it. This duty of organizations registered for the transmission of information is very important because the police do not have authority to enter the apartments to prepare the specific technical requirements for interception and recording. The the monitoring and recording is performed in mail and similar companies using the technique that already exist there.<sup>16</sup>

At this point it should be noted that there is a legal possibility that if during the secret surveillance of communications suspect start using another phone number or address, police, SIA and MSA can independently expand the surveillance and communication to that phone number or address. This expansion of secret surveillance is conducted without a formal decision, but it is conditional and time-limited, because the formal expansion of secret surveillance of communications can only occur after approval of the court, and at the initiative of the public prosecutor.<sup>17</sup> In this sense, it is essential that the police, SIA and MSA immediately notify the public prosecutor who immediately submit a proposal to judge for preliminary proceedings for approval of the expansion of secret surveillance of communications. The preliminary proceedings judge decides within 48 hours of receipt of the proposal. If the proposal is accepted, there is a subsequent expansion of secret surveillance of communications, and if its rejected - all collected materials obtained in this way is destroyed and can not be used later in the Criminal Procedure Code (art. 169).

Finally, at the end of the secret surveillance of communication, the police, SIA and MSA submitting to the judge for preliminary proceedings recordings of communications, letters and other items and the special report containing: start and end of surveillance, details of the official who carried out the monitoring, a description of technical facilities which are applied, and the number of available information on persons covered by the supervision and evaluation of the appropriateness and application of the results of controls (Art. 170, p. 1). The preliminary proceedings judge will carefully open letters and other parcels trying not to damage stamps, and to save the seals and addresses, and after that he makes report. All material obtained by the implementation of secret surveillance of communications shall be forwarded to the public prosecutor who will determine that the recordings obtained using technical means fully or partially be copied and described.

#### 4. Secretly monitoring and recording

Secretly monitoring and recording of the suspect shall be determined under the fulfillment of the general conditions common to all the special evidentiary action and can be done for two reasons: first - in order to detect contact or communication of the suspect in public places and places where access is limited or on the premises, except in the apartment, but only if it is probable that the suspect will be present there or if it is certain that he will use certain transport, etc. - in order to establish the identity of the person or locating persons or things (art. 171, Para. 1 and 2). Secretly monitor and record of the suspect is usually reflected in the acoustic surveillance of the rooms, cars

<sup>16</sup> Bošković, A. *Ibid*, p. 159.

<sup>17</sup> Ignjatović, Đ., Škulić, M. *Ibid*, p. 367.



and a man, in a secret photography, visual monitoring of the facilities, the secret recording with classical and digital cameras, video cameras, tape machines and similar devices (*i.e.*, photo and TV- documenting). This primarily refers to the conversations that take place live, for example, on the street, the square, the public assembly, but without the use of special technical devices, but with tape-and optical recording.

The difference compared to the secret surveillance of communications is reflected in the fact that at the secret surveillance of communications its about communications made with some technical device, while the secret monitoring and recording emphasis on visual observation and monitoring of the person, and the second element of this special evidentiary actions is control of the communication *in vivo*.<sup>18</sup>

The importance of secretly monitoring coverage and technical recording of persons and objects is that, in addition to the repressive, it can achieve a certain preventive effect. By using this special evidentiary action you may prevent the execution of another criminal act, and it can also lead to data that shows certain preferences, habits and manners of certain persons, identify the persons they comes in contact with and form of those relationships, as well as other facts relevant to the prevention of certain criminal activities. It is therefore essential that the monitoring, or the person who is monitored as well as the items of importance for criminal proceedings record with the appropriate technical devices, depending on the objective possibilities.

In view of the before mentioned legal formulation, the question arises whether "recording" in the context of the special evidentiary action involves only the video, or sound recordings also. On the one hand, there is an argument that says that the term "record" includes both video / photo capture, and tone. On the other hand, supporting the fact that this particular action does not include sound recording, according to the argument that the purpose of secret surveillance and recording is detection of suspects communication and contacts in public places or places with limited access or on the premises, except in the apartment, and determining the identity of the person or locating persons or things, so from that goal it comes that it only includes video/photo recording.<sup>19</sup> Also questionable is the fact that the legislator does not talk about secret surveillance and recording of communications of the suspect, but only secretly monitor and record the suspect to detect communications, which suggests that the coverage of the shooting suspect as a physical phenomenon.

In this way, the legislator has not defined the application of these special evidentiary action because it is not explicitly stated that secretly monitor and record covers and communications suspect. On the occasion of this practice is of the view that the application of these special evidentiary actions can record and suspect communications with other persons so what will come in and set the technical recording devices in appropriate facilities, places or means of transport, but once again it should be emphasized that these special evidentiary action can not be carried out in the apartment.

In terms of jurisdiction to determine the special evidentiary action applies the same rule as for the secret surveillance of communications, which means that orders the judge for preliminary proceedings at the reasoned request of the prosecutor, and such court order must contain certain elements required by the CPC. Also, in terms of the duration of the special evidentiary action applies the same rule as for the secret surveillance of communications, meaning that the procedures for organized crime offenses secret

<sup>18</sup> Radisavljević, M., Četković, P. *Ibid*, p. 178.

<sup>19</sup> Ignjatovic, Đ., Škulić M. *Ibid*, p. 371-372.

surveillance and recording may take longer than a year. Finally, to secretly monitor and record the suspect executed by authorized police officers of the Security Information Agency or Military Security Agency. About implementation of surveillance or recording shall be made daily reports that along with the collected recordings submitted to the judge for preliminary proceedings and the public prosecutor at their request (Art. 173, p. 1). Upon completion of the secret monitoring and recording of the suspect, the judge for preliminary proceedings are shipped all collected recordings, as well as a special report which is identical as for the application of measures of secret surveillance of communications. Also, a judge for preliminary proceedings with the received video is identical as for the application of special evidentiary actions secret surveillance of communications.

## 5. Simulated affairs

Simulated affairs represent a special evidentiary action which may be ordered when filled general legal requirement common to all the special evidentiary actions. The conclusion of simulated tasks involves two categories of activities of authorized entities. First - includes simulated purchase, sale or providing business services, and secondly - simulated giving or receiving bribes (these are two separate activities). Measure simulated purchase, sale or provision of business services its full application in detecting and providing evidence in criminal acts in the field of smuggling and illicit trade in various kinds of prohibited and valuable goods. It is certainly the activity of organized crime, while the rate simulated giving or receiving bribes successfully be used in clarifying and proving corruption criminal offenses - criminal activities which also often performs organized crime.<sup>20</sup>

Using simulated buying and selling items or providing a business service based on uncompromised operational relationship (associate) or at work undercover investigator in a some criminal organization. In certain situations and at certain activities of organized crime, most often in smuggling and illegal trade, they find the "buyer" in consultation with the police. They do this in order to samples of certain types of goods or smaller quantities of goods sold without disclosure by the police, who usually play the role of the customer. In this way the collaborator or undercover investigator generate greater confidence in the criminal organization, and enables the police to detect and prove criminal acts of organized criminal activity, and when it estimates that there are most favorable conditions for cutting and catching the offender and the confiscation of smuggled goods or goods intended for illegal trade.<sup>21</sup> In any case, when assessing favorable conditions should take into account not only the type and quantity of smuggled goods, but also the number of offenders in the criminal chain, as well as their status and hierarchy in a criminal organization.

When it comes to simulated sales can always ask the question where the person required to make a simulated sale to obtain a specific item sells. For example, if you need to perform simulated drug dealing, where the police will get the drug. Although all temporarily confiscated drugs, including one that is based on court judgments targeted for destruction, are held in the premises of the Ministry of Interior, the question arises

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<sup>20</sup> Bošković, A. *Ibid*, p. 164-165.

<sup>21</sup> Boskovic, M: *Organized crime and corruption*, High School of Interior, Banja Luka, 2004, p. 133rd

whether this drug is used to implement these actions.<sup>22</sup> Therefore, much more likely to apply simulated buying than simulated sales, because in simulated sales, in addition to the issue that is reflected in how to obtain the object of sale, there is the problem of destiny so "sold" items. Namely, if the "sale" of drugs, and in this case does not come immediately to arrest, it is highly likely that this drug will be used by the suspects, whether they themselves use, whether it is put away in traffic.

In connection with this special evidentiary action it should be noted that the characteristic simulated can have only those actions whose consequences can fake a, such as illegal criminal cases. In the case of incrimination of serious bodily injury, murder or rape, simulated not possible. In establishing criminal contact that aims to reach an agreement for the execution, and the execution criminal act in a simulated conditions, naturally comes to the impact of one side over the other, and their interaction. When it comes to member services, should not contain elements of instigation to crime. At the same time, it necessarily implies making proposals for the implementation of a specific task or action, place and time they are taken, and other commonly By way of elements, so that some form of guidance, or routing, in this case inevitable.<sup>23</sup>

In terms of competence for determining simulated affairs applies the same rule as in the previous special evidentiary actions. This means that orders the judge for preliminary proceedings at the reasoned request of the prosecutor, and such court order must contain certain prescribed items Code of Criminal Procedure (CCP). Also, in terms of the duration of the special evidentiary action applies the same rule, which means that the procedures for organized crime offenses simulated affairs can not last longer than a year.

As with secret surveillance of communications and secret monitoring and recording suspect rule that a court order executed by authorized police officers, Security Information Agency (SIA) or Military Security Agency (MSA). However, when it comes to simulated affairs and also provides for an additional provision which provides that, if required by the specific circumstances of the case, a court order may be performed by another authorized person. In this sense, "under other authorized person should understand the authorized person from another local authority, institution or enterprise, but it is not excluded that it be authorized person from the foreign authorities, institutions or enterprise."<sup>24</sup> When it comes to simulated bribery sure that the "other authorized person" in this case could be the person who is required to give bribes, ie. passive subject of corruption, which is valued in each specific case. It is significant to note that another person authorized in each case suggests the police, Security Information Agency (SIA) or Military Security Agency (MSA), and determines judge for preliminary procedure, although this is not expressly provided for by law.

Finally, regarding the application of simulated operations in the Republic of Serbia is important to emphasize two more specifics. First - the authorized person who concludes simulated business is not crime for the action undertaken by the Code of

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<sup>22</sup> Dundović, D: *Special Collection of Evidence: simulated sale and purchase of objects and simulated bribery and simulated bribe-taking*, Police and Security, 20 (2), 2011, p. 175th

<sup>23</sup> Marinkovic, D: *Combating organized crime - special investigative methods*, Prometheus, Novi Sad, 2010, p. 390.

<sup>24</sup> Ilic, Mr. P, Beljanski, S., shirts, M., Trešnjev, *A Commentary of the Criminal Procedure: According to the Code of 2011, as amended on 1 October 2013*, Official Gazette, Belgrade, 2013, p. 431-432.

Criminal Procedure intended as an act of this crime (art. 176, para. 2). And second - is prohibited and punishable to the authorized person encourages another person to commit a criminal act (art. 176, para. 3). This practically means that during simulated purchase, sale or provision of business services, ie simulated giving or receiving bribes authorized person must not "offer" execution of work because this would be a provocation to commit a criminal act.

## 6. Computer data search

Computer data search is of great importance in many developed countries, especially in connection with a prominent computerization of personal and other data, and great opportunities that these data are provided in connection with the collection of evidence. As far as the legal basis for the implementation of these actions, computer search data may be ordered when filled with general legal requirement common to all the special evidentiary action which has already been discussed.

The essence of this special evidentiary actions is reflected in the computer search already processed personal and other data and their comparison with the data related to the suspect and the criminal act. Here, above all, to the personal and other information of citizens collected for different purposes by many public services and state agencies and that organizations, and health, education, various funds, insurance companies and others.<sup>25</sup> Its significance is precisely that it allows the search and collection of personal and other data and information which can be related to criminal activity. This creates the conditions for the application of the method of elimination of certain individuals from the circle of suspects or determine the circle of suspects after their automatic connection and comparisons with data relating to the person who has committed a criminal offense.

Computer data search closer can be divided into positive and negative raster search. Negative raster search contribute to the elimination of certain individuals from the circle of suspects automated searches by police, administrative and other records. On the other hand, the positive raster search involves determining the circle of suspects on the basis of certain characteristics, facts or skills that are observed in the unknown perpetrator of a crime (eg. In the driver escape from the scene of a traffic accident where the not well-known brand and type of vehicle - indicating drivers of such vehicles as potential perpetrators).<sup>26</sup>

In terms of jurisdiction to determine a computer search data applies the same rule as in the previous special evidentiary actions, which means that orders the judge for preliminary proceedings at the reasoned request of the prosecutor, and such court order must contain certain elements required by the Code of Criminal Procedure. However, the duration of the special evidentiary action rule is that it can last for three months, and the necessity of collecting further evidence can be extremely extended more than twice in a period of three months. It actually means that the action of computer data search can last up to nine months, unlike other special evidentiary actions which were previously discussed.

A court order executed by authorized police officers, Security Information Agency, Military Security Agency, customs, tax or other services or other State agency or legal

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<sup>25</sup> Bošković, A. *Ibid*, p. 167<sup>th</sup>.

<sup>26</sup> Milosevic, M. Kesic, T: *Police in the Criminal Procedure Code*, Police Academy, Belgrade, 2009, p. 186.

person under the law with public powers (Art. 180, p. 1). Upon completion of computer data search by the police, Security Information Agency, Military Security Agency or other authorized state authority or a legal entity shall submit to the judge for preliminary proceedings report must contain the elements prescribed by the Code of Criminal Procedure, and the judge for preliminary proceedings will deliver material and report to the public prosecutor.

## 7. Controlled delivery

Controlled delivery is a specific special evidentiary action which deviates from the principle of legality of criminal prosecution because they do not initiate criminal proceedings even though there are grounds for suspicion that a criminal offense. The essence of these special evidentiary actions is reflected in the fact that the controlled delivery allows, with the knowledge and under the supervision of the competent authorities, illegal or suspicious shipments have been delivered within the territory of the Republic of Serbia or to enter, cross or leave the territory of the Republic of Serbia. In this way it allows illegal or suspicious shipments out, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities for the purpose of investigation and identification of persons involved in the committing an offense.<sup>27</sup> This measure can be implemented in the territory of one or more countries. In its implementation in the territory of the Republic of Serbia must participate members of the police and customs authorities, especially when the consignment is to be controlled comes from another country, and is unknown to its delivery.

Controlled delivery may be ordered when it is filled with general statutory requirement common to all the special evidentiary action, and its purpose is to collect evidence for a trial and detecting suspects. Unlike the previously mentioned special evidentiary actions, controlled delivery does not order the preliminary proceedings judge, but the State Public Prosecutor and other public prosecutors of special jurisdiction - Prosecutor for Organized Crime and War Crimes Prosecutor. So, when it comes to controlled delivery, the decision on the order on its implementation is in the hands of the public prosecutor, not the court.

The main objective of this special evidentiary action is to identify and confiscate the greater the amount of various goods, no matter what kind of shipments and in order to reveal the organizers, heads of criminal activity, as well as the executors in as many. By monitoring and controlling the delivery attempt is made to discover the actors who occupy high positions in the hierarchy of the criminal organization and this action "combined with other methods of secret surveillance (secret optical, video and physical surveillance), which allows it to be fully registered criminal activity and collect evidence important for criminal proceedings."<sup>28</sup> Therefore, this measure is commonly used for the detection and identification of significant activities of organized crime, such as criminal offenses in connection with the smuggling of drugs, weapons, ammunition, explosive substances, money, cultural goods, cigarettes, technical goods, as well as other valuable commodities.

<sup>27</sup> Bošković, A. *Ibid*, p. 155<sup>th</sup>.

<sup>28</sup> Boskovic, G: *Organised crime*, Police Academy, Belgrade, 2011, p. 242<sup>nd</sup>.

Controlled delivery conducted by the police and other state authorities designated by the competent public prosecutor and implemented with the approval of the competent authorities of the states concerned and on the basis of reciprocity, in accordance with the ratified international agreements regulating in more detail its contents. It is important to emphasize that for each delivery has to be a special approval of the public prosecutor, which means that the police can not permit the public prosecutor which is given to one used for the delivery of another shipment. In case of delivery, which should exceed the border of two or more countries, then the implementation of these measures include the competent authorities of these countries, Interpol, if necessary, and other international bodies.

The control of illegal transport in practice can be achieved in different ways, depending on the vehicle which is transported implemented and factual possibilities for its supervision in each case. So be suspicious or illegal shipment can be monitored by an undercover investigator (undercover agents) incorporated into a criminal group dealing with illegal transportation or informants that police authorities communicated its direction and people who implement it. However, the supervision and control of shipments may take even from a distance, using modern technical devices for optical inspection, observation or positioning, such as composite system of GPS, GIS and telecommunications devices.

In terms of duration of controlled delivery, it may be noted that the law does not determine its duration, but it prescribes that the Republic Public Prosecutor shall issue written approval for each particular delivery. However, it is expressly stipulated that the execution of a controlled delivery, the police or other state authority shall submit the report to the public prosecutor who, among other things, must contain data about the time beginning and end of controlled delivery, which certainly is the correct legal solution.

## 8. Undercover investigator

Engagement of an undercover investigator based on the experience of some foreign countries and indicates that it is a special action that is used to collect relevant information that may have evidentiary significance in combating organized and other crime more difficult. This action is in the Republic of Serbia later date unlike some countries which applied a longer time period and introduced amendments to the Code of Criminal Procedure (CCP) in 2002. The essence of engagement undercover investigator is that to collect and provide appropriate evidence against suspected members of the group or organization that has infiltrated and that, if necessary, testify about it in court.

As far as the legal basis for engagement of undercover agent, it should be noted that there are certain peculiarities in relation to other special evidentiary actions. First, the possibility of engagement an undercover investigator exists only in criminal acts under the authority of the Prosecutor's Office for Organized Crime and War Crimes Prosecutor, not the other crimes enumerated in the Code as is the case with other evidence actions. Also, the undercover agent can be employed only under the fulfillment of yet another additional condition, namely that the use of other special evidentiary actions can not collect evidence for prosecution or if their collection would be very difficult. So, engagement undercover investigator has a subsidiary character in relation to other

special evidentiary actions.<sup>29</sup> Only if it is established that the use of other special evidentiary actions can not collect evidence for prosecution or if their collection would be very difficult, takes into account implementation and engagement of undercover agent.

Order on the engagement of an undercover investigator made by a court or a judge for preliminary proceedings at the reasoned request of the prosecutor. This court order has certain mandatory and optional elements required by the CCP. By analyzing the individual elements commands special attention should be given to an optional element which means that the command on the engagement of an undercover investigator can be determined that the undercover investigator can use technical means for photographing or tone, optical or electronic recording. From these provisions, it is clear that the undercover investigator can record conversations which he attends and who designed it, but the question remains whether the undercover agent be in a certain apartment or room set up adequate bugs and record conversations which he did not attend. We believe that to approve this includes wiretap conversations of others.<sup>30</sup> Therefore, the question arises whether such an order in itself sublimates and command to enter a apartment and other rooms to set up listening devices, or would like to enter the apartment was in need of special court order. At this point we should recall the provisions of the Code, according to which secretly monitor and record the suspect possible in public places and places where access is limited or in the premises, but not in the apartment (Art. 171). With this in mind, the answer to this question becomes even more complex, but we think that in such a situation was possible to provide a separate court order to permit the entry of the flat and other premises and set up listening devices because it would be the only way to fully comply with the provisions of Art. 40 of the Constitution of the Republic of Serbia which prescribes the inviolability of residence. In any case, the most appropriate would be clearly and explicitly stated in the Code if it is possible, and if so under what conditions, to an undercover agent uses tone, optical or electronic record in the apartment, in situations where the entrance to the apartment is conditioned by an order of the court.

The involvement of the undercover investigator can last as long as necessary to collect evidence, but no longer than one year. However, at the justified request of the prosecutor the preliminary proceedings judge may extend this special evidentiary action for another six months. This means that the engagement of the undercover investigator can take a maximum of one and a half days, provided that the engagement of interruption as soon as the reasons for its application.

Only the determination of the undercover investigator follow certain characteristics that stem from the very nature of these special evidentiary action which is in many ways specific in relation to others. First, an undercover investigator of the minister responsible for internal affairs, director of the Security Information Agency or Military Security Agency or a person authorized by them. In the practical conduct of an undercover investigator will usually determine a person a minister or director of security services powers, and it is mainly the immediate superior of an undercover investigator. Furthermore, the undercover agent is always determined under a pseudonym or code. Significantly, the undercover agent as a rule an authorized official of the Interior, Security Information Agency or Military Security Agency, except if

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<sup>29</sup> Bošković, A. *Ibid*, p. 171<sup>st</sup>.

<sup>30</sup> See: Marinkovic, D. *Ibid*, p. 441-442.

required by the specific circumstances of the case, the undercover agent may be another person, even a foreign citizen. Also, to protect the identity of the undercover investigator, the authority may edit data in databases and issue identity documents with changed data are secret data (Art. 185).

At this point, we will indicate the two specificities of the undercover investigator in the Republic of Serbia. The first specificity is reflected in the fact that it is forbidden and punishable to an undercover agent in the commission of the offense (art. 185, para. 4). It is one of the circumstances under which the undercover agent differs from the Institute "agents provocateurs" who exist in many comparative jurisdictions, primarily in the United States. This practically means that the undercover agent was allowed to answer a criminal if overstepped his authority and abetted another person to commit the offense.<sup>31</sup> Be sure that on the occasion of such possible actions of the undercover investigator can occur multitude of issues, one of which is how to proceed if the undercover agent a criminal offense to thereby prevent the disclosure of his identity or role and did nothing to prevent certain criminal act in order not to reveal his role. These situations should be dealt with in accordance with the general rules of criminal law relating to supreme emergency.<sup>32</sup>

Another specificity that characterizes this special evidentiary action is reflected in the fact that the undercover investigator may be exceptionally examined in criminal proceedings as a witness, and only under a code or a pseudonym. Only testing will be done so that the parties and counsel not disclose the identity of an undercover investigator. Undercover investigator is summoned through elders who immediately before testing his statement before the court confirms the identity of an undercover investigator and yourself information about the identity of an undercover investigator to be examined as a witness representing classified information. Also, court decisions can not be based exclusively or to a decisive extent on the testimony of an undercover investigator (Art. 187). In the context of the previously outlined considerations should be noted that in Serbia there is no possibility of anonymous testimony, unless it comes to the above case, when examined as a witness to an undercover agent.

## 9. Conclusion

In countering contemporary forms of crime, especially organized crime activities, it is clear that the prosecutor, the police and other authorities can achieve greater efficiency and more complete success if they use only the classic, traditional criminal investigation methods, given that organized crime is very successful in its criminal activity uses modern scientific achievements in natural sciences and engineering. It is therefore necessary to enable the competent authorities through adequate legal provisions to use certain scientific achievements in combating organized and other serious forms of crime, taking into account that no violation of the freedoms and rights of citizens. In this respect, the European Court of Human Rights has approved the use of such new methods, just as he had in mind the fact that democratic societies are threatened by the constant threat of highly sophisticated forms of espionage and

<sup>31</sup> Under the incitement to committing an offense in this context is considered incitement in terms of criminal law, *i.e.* it can be any action to intentionally causes or reinforces the decision of another person to commit the offense.

<sup>32</sup> Details about this: Škulić M: Criminal act undercover investigator done as a last resort, *Legal Life*, 54 (9), 2005, p. 661-690.



terrorism, whereby each country has to manifest a willingness to carry out covert surveillance subversive elements in its territory. Therefore Court must acknowledge that the existence of powers to the legislative secrets surveillance, under specific conditions necessary to a democratic society and to because interests National Security and crime prevention.

In this regard, the Republic of Serbia Criminal Procedure Code provides for six special evidentiary actions that are largely consistent with international standards. There are a number of issues and concerns, especially when it comes to secret surveillance of communications and secretly monitor and record suspect that Serbian legislator in subsequent novels CCP needed to harmonize and precisely defined. The reason for the legal norms that restrict the basic constitutional rights of citizens, such as the secrecy of letters and other means of communication or the inviolability of the home, must be clear, precise and unambiguous, ie. everyone must advance be clearly aware of the specific actions to be taken to him if he violates the relevant legal regulations.

### Literature

1. Abadinsky, H: Organized Crime, Boston, 2000 certified.
2. Albanese, J. S: The Causes of Organized Crime: Criminals To Organize Around Opportunities for Crime or to Create New Opportunities Criminal Offenders?, Journal of Contemporary Criminal Justice, 16 (4), 2000b.
3. Bakesley, C: The Criminal Justice Systems Facing the Challenge of organized crime, RIDP / IRPL, however. 3, in 1996.
4. Boskovic, A: The actions of the police in the previous criminal proceedings and their probative value, Institute for Criminological and Sociological Research, 2015.
5. Boskovic, SG: Organised crime, Police Academy, Belgrade, 2011.
6. Boskovic, M: Organized crime and corruption, the High School of Interior, Banja Luka, 2004th
7. Boskovic, M., Vučković, V., & Boskovic, D: Basics of Criminology, Faculty of Business Management, Bar, 2007.
8. De La Cuesta, J. L. (Ed.), Resolutions of the Congresses of the International Association of Penal Law, XVIth International Congress of Penal Law (Budapest, 5-11 September 1999), Topic: The Criminal Justice System Facing the Challenge of Organized Crime, p. 10. <http://www.penal.org/pdf/ReAIDP2007/RICPL%201999.pdf> available on 10.06.2008. years.
9. Dundović, D: Special Collection of Evidence: simulated sale and purchase of objects and simulated bribery and simulated bribe-taking, Police and Security, 20 (2), 2011.
10. Ignjatovic, Đ., Škulić M: Organized Crime, Law Faculty, University of Belgrade, 2012. Reviews
11. Ilic, Mr. P, Beljanski, S., shirts, M., Trešnjev, A Commentary of the Criminal Procedure: According to the Code of 2011, as amended on 1 October 2013, Official Gazette, Belgrade, 2013.
12. Ivanović, Z., Banović, B: Analysis of legal regulation of communications and the jurisprudence of the European Court of Human Rights, Security, LIII (1), 2011.
13. Marinkovic, D: Combating organized crime - special investigative methods, Prometheus, Novi Sad, 2010.
14. Milojković, B. Marinkovic, D: global positioning systems and their importance in detecting and proving criminal offenses, NBP, no. 2, 2007.

15. Milosevic, M. Kesic, T: Police in the Criminal Procedure Code, Police Academy, Belgrade, 2009.
16. Pavlović, Z: Significance and Justification for the Establishment of Prosecutor's Office Special Jurisdiction in Combating Organized Crime and Organized Crime, The Challenge of the XXI Century, Faculty of Law, University Business Academy, Novi Sad, 2012, p.591-609.
17. Radosavljevic, M., Cetkovic, P: Special evidentiary actions in the prosecutorial investigation in Serbia, prosecutorial investigation - criminal procedure legislation and regional experiences in the implementation of the OSCE Mission in Serbia, Belgrade, 2014.
- 18 Savona, E. Adamou, S., & Zoff, P: Organized Crime Across the Borders: Preliminary Results, Heun no papers. 6, The European Institute for Crime Prevention and Control, affiliated with the United Nations, 1995, Helsinki, Finland.
19. Škulić M: Organized crime and criminal procedural aspects of the term, Dossier, Belgrade, 2003a.
20. Škulić M: Criminal act undercover investigator done as a last resort, Legal Life, 54 (9), 2005th
21. The Code of Criminal Procedure of the Republic of Serbia - "Official Gazette of the Republic of Serbia", no. 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14
22. Law on organization and jurisdiction of state authorities in fighting organized crime, corruption and other extremely serious crimes of the Republic of Serbia - "RS Official Gazette", no. 42/2002, 27/2003, 39/2003, 67/2003, 29/2004, 58/2004 - Dr. Law 45/2005, 61/2005, 72/2009, 72 / 2011- Dr. Law 101/2011 - Dr. Law 32/2013 and
23. The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols 1-14, (Convention on the Protection of Human Rights and Fundamental Freedoms), Official Gazette of SCG - International Treaties, no. 9/2003, 5/2005, 7/2005-correction and Official Gazette of RS - International Treaties, no. 12/2010.