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## **INFILTRATION TO CRIMINAL ORGANIZATION**

The institution “undercover agent” has been part of the Hungarian legal system since 1999. This particular “spy” of the police is maybe the most effective weapon against organised crime in the hands of crime-persecutors.<sup>1</sup> We can find the rules in details concerning the undercover agent in the Police Act (PA). In the Criminal Procedure Act (CP) are there only general instructions in this subject.

The six application methods of the undercover agent are included in the PA as well (these are: ”reconnaissance”; “sample-purchase”; “confidential purchase”; “fake-purchase”; “infiltration to criminal organization”; and “controlled transportation”).

The infiltration is the most interesting and in every respect the most effective one among all the application methods. The institution undercover agent came into being in the sign of the fight against organised crime, but the infiltration means a little bit more: the agent becomes a member of the crime organization, and even offers crimes, if the situation requires. This the question, that usually comes to somebody’s mind when hearing the expression undercover agent, and this is the application method, which rise the most problems in the practice, that is why I write about it in this study.

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<sup>1</sup> PA 68/F.§ e) undercover agent: police officer with concealed identity acting in the course of covert information-gathering.

## **1. The legal instruments to help realize the infiltration**

We know quite few about the infiltration, because it is regulated through top secret norms in Hungary. The PA makes it possible to give authentic documents (so called cover-documents) including the data of the fictitious personality (the so-called “legend”) to the undercover agent (identity card, driving license etc.), and to bring a simulated institution (cover-institution) into existence (for example the workplace of the agent). The act allows to place several data in the administrative registers, as well (cover-data).

The official part of the fake identity can be pretended almost perfect, even police officers are not able to recognize who is standing in front of them if they check the agent’s identity on the street. It is much harder to make the member of the criminal organization believe that the agent is a criminal who offered a lot of delicts in the past. The agent needs somebody known well by the members of the mafia, who introduces him and helps him to infiltrate. It is no accident that in the famous Clodo-case Stecura was also needed to make the deal:

The German citizen Clodo was a very dangerous criminal, who used to produce and sell bombs (his nickname was “The Bomb-maker”). The police put an undercover agent in action, who bought a remotely controlled bomb from Clodo (the price was 2500 US dollars) together with another criminal cooperating with the authorities, Leonid Stecura (he was the head of the Ukrainian mafia in Hungary, accused with murder).

The officer was interrogated in the criminal procedure as a witness under special protection. All we know about him is that he was a member of the Central Law Enforcement Agency (this institution has been wound up since then), and in choosing him to this mission played his knowledge of Russian and his disposition a role. Finally, Clodo was sentenced to ten years in prison and expelled from the country. As we can see, this was just a fake-purchase, not infiltration, but the help of a “pentito” was indispensable.

## **2. The selection and training of the undercover agent**

The infiltration is a risky action, so the right person has to be selected very carefully. Obviously the success of the infiltration does also depend on whether the selected detective has been trained to complete his tasks well.

## 2.1. The guidelines of the selection

This kind of mission needs extraordinary qualities, which are also determined by the character of the criminal organization to be dissolved. Considering the human qualities, the following ones are important: the ability to play a role, calmness, the ability to make fast decisions,<sup>2</sup> to notice everything, and a strong personality (to have a different identity for a long time).

Some of the criminalists suggest founding a squad of undercover agents from people who are not members of the police.<sup>3</sup> Probably a squad like this can be effective in the fight against organized crime, but I am not sure whether a person without experience of being a policeman could correctly complete a mission like that, or would be reliable enough.

By the selection of the undercover agent, besides the subjective qualities listed above also knowledge of foreign languages,<sup>4</sup> professional skills or education might have remarkable influence, but in certain cases it is necessary to belong to an ethnic group or minority. The sex and the age can also be relevant.

In foreign countries usually young people are infiltrated. The chance to get pinched because of acting as a policeman in the past is much lower this way, but it is a disadvantage to the agent, that he has no experience in fighting against crime. I think it is favourable to infiltrate an older person with a settled personality. The big danger in the infiltration to criminal organization is, that the agent begins to feel "more comfortable" among criminals.

If the appropriate person is found, he has to undertake himself to complete the mission. Whereas we don't know the top secret regulation of the infiltration, and we know, that a detective has to execute every command he gets, it is unbelievable to me, that a person can be ordered to do such a dangerous task without his consent. The infiltration can not only ruin the agent's life, it is a great danger to his family and his relatives as well.

I do not think it is necessary to describe what would happen, if the agent would make a mistake. In Switzerland there is a federal act about the under-

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<sup>2</sup> It happened in Quebec: an informant who was infiltrated in a terrorist group realized, that one of the terrorists is going to blow up a post office in the night. He did not want to reveal his identity to capture only one terrorist, so he exchanged the dynamit sticks for harmless, non-explosive bullets. Brodeur, JP.: A rendőrségi informátorok alkalmazásának jogi problémái Kanaďában. (The legal problems of the application of police informants in Canada) *Belügyi Szemle*, 1997/5., p. 40

<sup>3</sup> Balláné-Borszéki-Lakatos: *Kriminálmetodológia*. (Criminalmethodology) Rejtjel Kiadó, Budapest, 2002, p. 107

<sup>4</sup> See the bombmaker's case: the Russian of the agent was indispensable to make the German Clodo believe he is the friend of the Ukrainian Stecura.

cover police surveillance (Bundesgesetz über die verdeckte Ermittlung), which says “the leader of the police organ is allowed to appoint somebody to be an undercover agent, if the person agrees with it.”

## **2.2. The training**

The infiltration to criminal organization is very dangerous as I mentioned, so the agent has to be trained carefully. Even if we suppose the existence of a squad with undercover agents in its lines, there are a lot of things to learn in the connection with the certain case.

On the one hand the agent has to memorize his new personal data, get used to his cover-name, and to practise his created story about himself. He must learn every piece of information in connection with the criminal organization discovered earlier by the police. On the other hand he has to acquire the hiding and using of the technical appliances he is going to obtain incriminating (or extenuating!) evidence with.<sup>5</sup>

It is necessary to think the action over, and to plan the reaction of the undercover agent if a surprising thing happens (ex.: an acquaintance of the agent from civilian life recognizes him on the street).

Finally, the agent has to keep the commands of his superior and the permit from the public prosecutor in view, and to do his job accordingly.

## **3. The infiltration itself**

I have not heard of such a case, when members of a criminal organisation were captured through the acting of an infiltrated undercover agent in Hungary. For this reason I can only have assumptions how the infiltration goes in the practice.

The application of an undercover agent is reasoned, when the circle of the crime offenders is closed, and nobody seems to have an intent to cooperate with the police. But this does not mean, that the infiltration can be done without the help of criminals acting in the milieu of the criminal organization (the so-called “ring round the moon”).

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<sup>5</sup> The undercover agent is not allowed to make records in a private flat, only in a place open to the public due to Hungarian law. He needs a permit from the court to gather information in a private flat.

The criminals who are cooperating with the police mean the undercover agent's recommendation, they have the function to strengthen the agent's created story about himself.

Which kind of cover-story can be needed? This depends on the character of the crimes offered by the members of the criminal organization. By a gang of criminals, which became specialized in steeling cars<sup>6</sup> (this is what the majority of Hungarian organized crime is made up), it is useful for the agent if he pretends he is a second-hand car dealer.

In this case it is necessary to bring a cover-institution into existence to simulate the store, to issue cover-documents about the firm, and to put its cover-data in the register of companies. This way the authorities have a good opportunity to gather information. The role-play has to be continued until the criminal organization is totally mapped, because if the group is well-organized even the offenders themselves do not know all the members, only the ones they are in direct connection with. (The basis of their cooperation is a special single-channelled communications system.)<sup>7</sup>

The infiltrated undercover agent is just a link in the line of the customers, executers, storemen, the ones who issue the documents and examine the cars. He has to get to those persons who are controlling the whole process.

The crime organization mentioned above - although it is obviously a sort of organized crime - can not compare with the mafias in the USA and Italy yet. But the real danger to the society are those criminals who became specialized to so-called "harder goods and services" (like drugs, dealing in foreign currencies, firearms, gambling, prostitution), because the application of violence is typical of them.

This groups are the most risky to infiltrate in, by these gangs has the undercover agent the biggest chance to commit a crime. Let us think over, an undercover agent who is a member of a mafia dealing with drugs can not avoid offending criminal misuse of narcotic drugs practically. (This kind of crime is called "offence required by the milieu" in the legal literature.)

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<sup>6</sup> I barrowed this example from Valér Dános's study (The Organized crime). Gönczöl Katalin (szerk.): Kriminológiai ismeretek, bűnözés, bűnözéskontroll. Corvina, 1999, p. 211.

<sup>7</sup> Valér Dános: cited work p.216

#### **4. Questions of discovering evidence by the infiltrated undercover agent**

After a successfully infiltration the agent becomes very important in many respects:

- every piece of information he gets helps the further exposition of the police,
- his report is appropriate to be a documentary proof in the criminal procedure,
- he can be questioned as a “witness under special protection”<sup>8</sup> in the court proceedings (so everything he sees or hears can have significance later),
- the investigative authority has got the opportunity to obtain direct evidence by him.

The great advantage of the application of an undercover agent is that he can gather direct evidence from the offenders themselves. A secret agent with appropriate technical equipment is able to record the criminals’ conversation while they are laying a scheme to offend a certain crime. If he is present at the offence he can even record the moments of its realization.

The Hungarian legal regulation concerning this kind of information-gathering is quite interesting. The undercover agent does not have the right to discover evidence in a private flat: he can not search it through, he can not take photographs in it, and can not record the conversation between the people in it. A permit from the court is needed to do this.

In consequence of the PA’s rules an undercover agent is allowed to make records only in a place open to the public (ex.: in a restaurant or a bar). The detective has to achieve the “confessions” of the offenders in a place like that, he has to make them talk.

If the agent makes records in a private flat without authorization from the court he perpetrates the felony “illegal covert information-gathering” on the one hand. On the other hand, the evidence obtained this way is unlawful and can not be used as a proof in the criminal procedure. This is the principle of “the fruit from the poisoned tree”<sup>9</sup>, which runs in CP follows: “It is not allowed to evaluate the evidence which has been discovered through a crime (...) by the judge, the public prosecutor or the investigative authority.”

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<sup>8</sup> This institution of Hungarian criminal procedural law means that the witness is not participated on the trial, and his identity is unknown to the accused and his defender.

<sup>9</sup> Flórián Tremmel: Magyar büntetőeljárás. (Hungarian criminal procedure.) Dialóg-Campus, Budapest-Pécs, 2001, p. 282

## **5. Consideration**

I hope, with the introduction of the application method “infiltration to criminal organisation” I succeeded to prove how effective the undercover agent can be in the fight against organized crime. In Hungary it is not common to infiltrate undercover agents in the mafia yet, because this institution is very young, and there is not enough practical experience in connection with it. According to the non-confirmed information from the Department of the Interior, the number of those agents, who are working in a deep shallow operation in Hungary is about 10-12. The duration of this kind of mission is limited to six months, to avoid the danger of becoming a real criminal.