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Review Article

THE IMPORTANCE OF SECRET SURVEILLANCE OF COMMUNICATIONS IN DETECTION AND PROVING THE CRIMINAL OFFENSE OF EXTORTION[a]

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Abstract. *On the one hand, the crime of extortion is a conventional criminal offense; on the other hand, taking into account the highly specific level of organization, it is a modern criminal act. Such a stance has been justified by the statutory provisions incriminating the qualified forms of this criminal offense which is committed by organized criminal groups. Bearing in mind that our legislator has enacted different measures for combating organized crime, Serbian legislation includes specific measures and investigative techniques aimed at counteracting this type of crime. In addition to traditional methods which have now become part of regular evidentiary actions, the 2011 Criminal Procedure Code precisely regulates the former special investigative techniques, which are now part of special evidentiary actions. In this paper, the authors analyze one of the six prescribed special evidence-gathering actions - the secret surveillance of communications and its application in detecting and proving the criminal offense of extortion, particularly considering that the legislator explicitly prescribed the circle of offenses that may be subject to applying the special investigative measures whose scope of application includes some of the qualified form of extortion. Finally, the authors point to possible modifications of the legal provisions on the secret surveillance of communications, which should be precisely regulated in order to improve the procedural application of this special investigative measure in detecting and proving the criminal offense of extortion.*

Key words: *extortion, secret surveillance of communications, detection, proving*

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1. INTRODUCTION

Bearing in mind that the criminal offense of extortion is a conventional criminal act which falls into the group of criminal offenses against property, the Serbian legislator initially endeavored to fight against extortion by using conventional methods; hence, evidence was secured and proved by traditional methods. The concept of organized crime was introduced into Serbian legislation relatively late, by introducing amendments to the 2001 Criminal Procedure Code (CPC). The amended 2002 CPC included a special Chapter 29a pertaining to special provisions on the procedure for criminal offences involving organized crime[1]. It was followed by numerous changes of individual legislative acts that our criminal procedure system is based on, as well as the laws that were adopted as *lex specialis*. A new Criminal Procedure was adopted in 2006 but its application was postponed several times, and it was eventually made ineffective (which exerted a major positive impact on the CPC). Another significant development followed in 2009, by introducing amendments to the 2001 CPC. Finally, in 2011, the Serbian legislator adopted a completely new Criminal Procedure Code, which has been modified several time but is still applicable in the Republic of Serbia.

In the field of criminal law, an important piece of criminal legislation is certainly the 2005 Criminal Code, which entered into force on 1st January 2006. It was also amended several times but the most extensive amendments were introduced in 2009, which included changes in terms of introducing new conceptual forms and qualified forms of criminal offences, including *inter alia* different forms of organized crime; thus, the legislator introduced aggravating circumstances pertaining to the crimes committed by an organized criminal group as a mandatory element of the criminal offence of organized crime. Such modifications ensued in terms of the criminal offense of extortion, which used to be envisaged as a criminal offence committed by an organized group, whereas the new legal provisions clarified the distinction between *a group* and *an organized criminal group*; thus, the existing definition of an organized group was amended by introducing a new provision clarifying the concept of *a group*, as well as a new qualified form related to the criminal offence committed by *an organized criminal group*, where this element implies a form of organized crime.

Along with the previously mentioned changes in the Criminal Procedure Code and the Criminal Code, which are systemic laws, a series of other laws were adopted in order to improve the efficiency of combating organized crime. Of particular importance is the Act on Organization and Jurisdiction of State Authorities in combating organized crime, corruption and other particularly serious crimes, which was adopted in 2002 and amended more than ten times until 2016, when a completely new Act on Organization and Jurisdiction of State Authorities in combating organized crime, terrorism and corruption[2] was enacted; this Act should start being implemented on 1st March 2018. Another legislative act aimed at promoting the efficiency of fighting organized crime was the 2008 Act on Confiscation of the Proceeds from Crime, whose application began in 2009; however, in 2013, the legislator adopted a completely new Act Confiscation of the Proceeds from Crime, which was also amended in 2016.

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[1] The amended 2002 Criminal Procedure Code (CPC), *Official Gazette of the FRY*, 68/2002.

[2] Act on Organization and Jurisdiction of State Authorities in combating organized crime, terrorism and corruption, "*Official Gazette of RS*", No. 94/16.

The amendments inevitably introduced special investigative techniques in the process of combating organized crime, which are primarily aimed at ensuring a more effective detection and prosecution of perpetrators of organized crime. In the new Criminal Procedure Code, they are replaced by the special evidentiary actions, and the legislator has extended their application to the enumerated criminal offenses, particularly those involving organized crime.

This paper focuses on the secret surveillance of communications as a special evidentiary action aimed at detecting and proving the criminal offense of extortion, especially considering the fact that this specific criminal act includes the elements of traditional forms of crime (in which case the legislator allows the use of secret surveillance of communications), as well as the elements of organized crime (in which case the legislative norms envisage the use of secret surveillance of communications).

The analysis of this special evidentiary action in detecting and proving the criminal offense of extortion shows that there were problems, or more precisely the disadvantages of a practical nature which may be eliminated in the future modification by enacting precise standards. In this sense, the paper first focuses on clarifying the concept of the criminal offense of extortion under the Serbian Criminal Code, the general conditions relating to the application of secret surveillance of communications, as well as special evidentiary actions. Then, we discuss the purpose of specific activities aimed at detecting and proving extortion by conducting secret surveillance of communications, and point to the ambiguities and concerns which have been encountered in practice, Finally, we urge for enacting relevant legal provisions which would further regulate this legal issue.

2. THE CRIMINAL OFFENSE OF EXTORTION IN THE REPUBLIC OF SERBIA

In the criminal legislation of the Republic of Serbia, extortion is regulated in Article 214 of the Criminal Code (CC)[3], in Chapter 21 dealing with crimes against property. This offence has one basic form and four qualified (aggravated) forms. The basic form of extortion implies causing another person, by use of force or threat, to act or not to act at the detriment of one's own or another's property with intent to obtain unlawful property gain for himself or another person (Đurđić, Jovašević, 2010).

The commission of this crime implies coercion of the passive entity to act or not to do something at the detriment of one's own or another's property. Coercion is exercised in two ways: by force or threat, which are envisaged as alternative forms; thus, coercion can be manifested by the use of force as well as by the use of threat, which certainly does not exclude the possibility of using both force and threat cumulatively.

According to its characteristics, extortion is a specific criminal offense where coercion appears only as a means for achieving the primary objective of extortion: obtaining illegal gain or property benefit (Lazarević, 2011). Considering that the primary aim of extortion is to obtain illicit gain, this criminal offense is classified as a crime against property, rather than a crime against citizens' individual rights and freedoms; even though the use of force and coercion constitutes a violation of citizens' rights and freedoms, it is not the main objective of the extortionist, who uses coercion only to achieve the primary goal of acquiring illegal profit (Škulić, 2015).

[3] Criminal Code of the Republic of Serbia,*"Official Gazette of RS*", No. 85/05, 88/2005, 107/2005, 72/2009, 111/2009, 121/12, 104/13, 108/14 and 94/16.

This criminal act may be committed by any natural or legal person whose guilt is established on grounds of direct intent to use force or threat for the purpose of obtaining illicit gain for oneself or another. If force or threat is applied without such intent, the act does not constitute extortion but some other criminal offense (primarily coercion). This criminal offense is punishable by a term of imprisonment ranging from one to eight years (Konstantinović-Vilić, Kostić, 2011).

Besides the basic form, the crime of extortion has four more aggravated forms. The first and the second aggravated form of extortion are qualified by the amount of obtained illicit gain. Thus, if the illicit gain acquired by extortion exceeds 450.000 RS dinars, the offender shall be punished by imprisonment of two to ten years (Art. 214 para. 2 CC); if the illicit gain acquired by execution exceeds the amount of 1.500.000 RS dinars, the offender shall be punished by imprisonment of three to twelve years (Art. 214 para. 3 CC).

In addition to these two aggravated forms which are qualified by the amount of obtained illicit gain, there are two serious forms of extortion qualified by the specific circumstances of the offence. The third aggravated type of extortion is prescribed in one of the two alternative cases: 1) if the offender is habitually engaged in committing the basic form or one of the aforesaid aggravated forms of extortion (Art. 214 para. 4 CC), which implies an on-going commission of this crime in the form of regular “professional” activity; considering that the qualifying circumstance of this form of extortion is "habitual engagement" in this criminal activity, it is not enough that the extortion has been committed only once, even in those situations where the perpetrator’s intent to reoffend may be unambiguously established (Stojanović, 2013); and 2) if the criminal offense of extortion is committed by a group (Art. 214 para. 5 CC). This is not an organized criminal group, but any group as a qualifying circumstance of the committed act, in compliance with Article 112 (para. 22) of the Criminal Code, which implies at least three persons acting in conspiracy to commit continuous or occasional criminal offenses; the group does not have a developed structure, continuous membership and predefined roles of the group members. This form of extortion is punishable by a term of imprisonment ranging from five to fifteen years.

The most severe form of extortion (either the basic or more severe forms qualified by the amount of illicit gain) is carried out by organized criminal groups (Art. 214 para. 5 CC). Pursuant to Article 112 (para. 35) of the Criminal Code, an organized criminal group is defined as a group that exists for a period of time and comprises three or more persons acting in conspiracy to commit one or more criminal offenses which are punishable by imprisonment of four years or more, with the aim of obtaining direct or indirect financial gain or some other benefit. It should be noted that the current Criminal Procedure Code contains an identical definition of an organized criminal group (Art. 2, para. 1, item 33 CPC). Thus, the Criminal Code (CC) and the Criminal Procedure Code (CPC) are fully harmonized, which is very significant both in terms of legal certainty and in terms of uniform treatment to be provided by public authorities. This form of extortion is one of the typical activities of organized crime, which is commonly referred to as "racketeering" (Škulić, 2015). The crime of extortion is often identified with the jargon term “racketeering” or racket, which cannot be fully accepted because racketeering is one of the modes of action and manifestation of organized crime (Bošković, 2005). This most severe form of extortion is punishable by imprisonment of at least five years, which is prescribed as a special minimum sentence. As the legislator does not prescribe a specific maximum sentence, the maximum punishment is equal to the overall maximum sentence of 20 years’ imprisonment.

The first three forms of extortion (the basic and two qualified forms of extortion) are generally associated with conventional crime. Consequently, they are subject to proceedings before the Basic or the Higher Public Prosecution Office, and/or the Basic Court (Article 214 para. 1 CC) or the High Court (Article 214 paragraphs 3 and 4 CC). The forth and the most serious form of extortion was introduced into Serbian criminal legislation by substantial changes to the 2009 Criminal Code. This form of extortion is the only one that is envisaged as a form of organized crime. As the most serious form to extortion, it is subject to proceedings before the Public Prosecution Office for Organized Crime (as a public authority of special jurisdiction) and the Special Department of the Higher Court in Belgrade (Article 214 para. 5 CC).

3. CONDITIONS FOR THE APPLICATION OF SECRET SURVEILLANCE OF COMMUNICATIONS

The secret surveillance of communications is one of the six prescribed special evidentiary actions. It used to be conjoined with the secret monitoring and recording, but now these two distinct activities. Broadly speaking, specific evidentiary actions are used when traditional evidence-gathering activities do not provide sufficient results in criminal proceedings; they also apply to crimes that are difficult to detect, clarify and prove by using ordinary evidence-collecting actions. In the Republic of Serbia, evidentiary actions are regulated by Articles 161 to 187 of the Criminal Procedure Code (CPC)[4] within Chapter 7 relating to the examination of evidence after evidence gathering. Bearing in mind that the general legal standards applicable to specific evidentiary actions apply to all six evidence-collecting activities, the provided definitions relate to all special evidence-gathering actions.

The basic provisions relating to special evidentiary actions are prescribed by Articles 161 to 165 of the CPC. Special evidentiary actions may be ordered when two conditions are cumulatively fulfilled: 1) if there are reasonable grounds to believe that the person (who the special evidentiary actions pertain to) has committed a criminal offense envisaged in Article 162 of the Criminal Procedure Code (the substantive condition); and 2) if the evidence necessary for criminal prosecution cannot be acquired in any other manner, or if the collection of evidence would be significantly difficult (the subsidiarity principle) (Škulić, 2011: 49). The existence of the substantive condition (the reasonable grounds for suspicion that the person has committed any of the offenses referred to in Article 162 of the Criminal Procedure Code) is not sufficient evidence to determine specific actions, and these measures can be applied only if milder measures cannot achieve the desired goal (Marinković, 2010: 264).

In Article 162 of the Criminal Procedure Code, the legislator explicitly enumerated the criminal offenses for the commission of which the court may order specific evidentiary actions. First, these are criminal offences which (as regulated by a special legislative act) fall within the competence of the public prosecution office of special jurisdiction. In accordance with the Public Prosecution Act[5], the public prosecution offices of special jurisdiction are the Prosecution Office for Organized Crime and the Prosecution Office for War Crimes. Thus, the public prosecution office of special jurisdiction is eligible to act in case of criminal offences involving different forms of organized crime (stipulated in Article 2 of the Act on the Organization and Jurisdiction of Government Authorities in Combating

[4] Criminal Procedure Code, "Official Gazette of RS", No. 72/11, 101/11, 121/12, 32/13 and 55/14

[5] Public Prosecution Act, "Off. Gazette of RS", No. 116/08, 104/09, 101/10, 78/11-other law, 101/11 and 38/12, 121/12 -Decision US , 101/13, 111/14-US decisions, 117/14, 106/15

Organized Crime, Corruption and other Serious Criminal Offences and in Article 2(a) of the Act on the Organization and Competences of Government Authorities in War Crime Proceedings), as well as other extremely serious criminal offences, crimes against humanity and other values protected under international law. In addition to criminal acts of organized crime, the legislator explicitly prescribed a wide range of crimes; one of the explicitly enumerated criminal offences is the qualified form of the crime of extortion, which is criminalized in Article 214 para. 4 CC.

Considering the fact that special evidentiary actions are used for fact-finding purposes in the course of criminal proceedings, that they have a special probative force, and that in some cases the material collected by an evidentiary action may not be used as evidence, the legislator has prescribed the compulsory destruction of such material. In this regard, the judge in charge of preliminary proceedings shall issue a decision on the destruction of the material collected by means of special evidentiary actions in case the public prosecutor does not initiate criminal proceedings within six months from the date when he first examined the material collected by using special evidentiary actions, or if the judge declares that such material will not be used in the proceedings or that he will not initiate a criminal proceeding against the suspected offender(Art. 163 para. 1 CPC).

The judge for preliminary proceedings may notify the person who has been subject to a special evidentiary action about issuing the decision on the destruction of material obtained by using a special investigative measure of secret surveillance of communications, provided that two cumulative conditions are met: 1) if the offender's identity was established in the course of conducting the special evidentiary action and 2) if the destruction would not jeopardize the possibility of conducting the criminal proceeding. The material is destroyed under the supervision of the judge for preliminary proceedings, who shall make an official record thereof (Art. 163 para. 2 CPC).

The Criminal Procedure Code also regulates the accidental discovery of evidence, concerning cases where the evidence collected by means of special evidentiary actions on the criminal offence or the suspected offender was not covered by the court order on taking special evidentiary actions. Such material can be used in criminal proceedings only if it refers to a criminal offense under Article 162 of the Criminal Procedure Code. When applying the measure of secret surveillance of communications, random findings may be used as evidence in proceedings only in case it is established in the course of surveillance that the evidence on the committed criminal offense or offender has not been covered by the court order on taking this special evidentiary action.

The data on proposing, decision-making and implementation of special evidentiary actions involving secret surveillance of communications are classified information; as such, they have to be kept confidential and duly protected by all persons who have access to such data in any capacity.

In the positive legislation of the Republic of Serbia, secret surveillance of communications is regulated by Articles 166 to 179 of the Criminal Procedure Code, as the first special evidentiary action of the prescribed six.

The conditions for ordering secret surveillance of communications are regulated in Article 166 of the CPC, which stipulates as follows: if the requirements envisaged in Article 161 paragraphs 1 and 2 of the CPC are met, acting upon a reasoned request of the public prosecutor, the court may order covert surveillance (interception) and recording of communications conducted by telephone or other technical devices, or monitoring of the suspect's electronic or other address, as well as the seizure of letters and other parcels.

Secret surveillance of communications may be ordered if the substantive and formal (procedural) requirements have been met. The substantive requirement are contained in Article 161 (paragraphs 1 and 2) of the CPC, pertaining to the required level of suspicion and the inability to collect evidence by conventional evidence-gathering actions (Ilić, Maljić, Beljanski and Trešnjev, 2013: 393). The formal condition refers to the court decision, which is initiated by the reasoned proposal of the public prosecutor.

The court order on secret surveillance of communications is issued by the judge for preliminary proceedings, acting upon the the request of the public prosecutor. The judge may issue a decision rejecting the request of the public prosecutor; pursuant to Article 465(para.1) of the CPC, this decision is subject to appeal, which is examined by a pre-trial judicial panel in accordance with Article 467 (para. 3) of the CPC.

The respective court order contains the following elements: the available data on the person against whom the secret surveillance of communications has been ordered; the legal designation of the criminal offense; the specification of the suspect's identified phone number or address, or the phone number or address which are reasonably believed to be used by the suspect; the reasons for suspicion; the *modus operandi* and the body which will conduct the activity; the scope and duration of the special evidentiary action (Article 167 para. 2 CPC).

The secret surveillance of communication may last three months (from the date of issuing a court order on secret surveillance), and it may be extended (by a order of the judge for preliminary proceedings) for an additional period of three months if there is a need to collect more evidence, which means that this special evidentiary action may last for a total or maximum period of six months. Exceptionally, if a secret surveillance of communications is applied to criminal offenses falling within the jurisdiction of the public prosecutor's office of special jurisdiction, it may be extended for two more periods of three months at the most, which means that it may last for a total or maximum period of twelve months. The secret surveillance of communications is discontinued as soon as the reasons for its application cease to exist (Article 167 para.3 CPC).

The court order on secret surveillance of communications is executed by the police, the Security Information Agency or the Military Security Agency. The body in charge of conducting the secret surveillance is obliged to make daily reports, which are delivered to the preliminary proceedings judge and to the public prosecutor at their request, along with the collected communication recordings, letters and other consignments which are sent to or received by the suspect (Article 168 para. 1 CPC).

If, in the course of the secret surveillance of communications, the suspect is found to be using another telephone number or address, the public authority in charge of executing this special evidentiary action shall expand the covert surveillance of communication to that phone number or address, and immediately notify the public prosecutor thereof (Article 169 para. 1 CPC).

Upon receiving notification on the extension of secret surveillance of communications, the public prosecutor shall immediately submit a motion seeking approval for a subsequent extension of this special evidentiary action. The judge for preliminary proceedings is obliged to decide on this motion within a period of 48 hours from the receipt of the proposal, and make an official note on the record (Article 169 para. 2 CPC).

Upon completion of the secret surveillance of communications, the authority in charge of conducting the special evidentiary action is obliged to deliver the communication recordings, letters and other consignments to the judge for preliminary proceedings, along with the special report which shall include the following elements: the time of commencing

and terminating the covert surveillance of communications; the data on the officer in charge of conducting the surveillance; the description of technical devices used; the total number of persons covered by surveillance and available data on these persons; and the assessment on the efficiency and effectiveness of the conducted surveillance (Article 170 para. 1. CPC). The preliminary proceedings judge shall deliver all the material obtained during secret surveillance of communications to the public prosecutor, who may further request that the recordings obtained by technical devices be transcribed and/or described in full or in part (Article 170 paragraphs 2 and 3 CPC).

4. Detection and Proving of Extortion

In practice, there are many problems in the application of the special evidentiary action of secret surveillance of communications in the process of detecting and proving the criminal offense of extortion, as well as in the interpretation of the legal provisions of the Criminal Procedure Code (CPC). Namely, pursuant to Article 162 of the CPC, this special evidentiary action may be used for proving a qualified criminal offense of extortion, envisaged in Article 214 (para.4) of the Serbian Criminal Code, which implies its application only if the suspected person is habitually engaged in comitting a specific criminal offense, or if the offense is committed by a group. In the preliminary proceedings (Bošković, 2015), the perpetrator of the offense is often unknown or difficult to detect; in most cases, the action is taken against an unidentified individual in order to establish his identity and, thus, there is no knowlege whether the criminal act of extortion is committed by that person or by a group. Considering that the issue of legality and adequat application of each specific evidentiary action is very important in case of processing the perpetrator of a criminal offence, there is a risk that the evidence obtained by this special evidentiary action may be exampt if the court determines that it does not refer to a criminal offense envisaged in Article 214 para. 4 of the Criminal Code, but to some other offence envisaged in Article 214 paragraphs 1 to 3 of the Criminal Code.

The identical interpretation may be applied to Article 214 paragraph 5 of the CC, in case the criminal offense of extortion is committed by an organized criminal group. Therefore, in order to conduct secret surveillance of communications, it is first necessary to establish the existence of an organized criminal group (the same requirments applies to a group (Art. 214 para. 4 CC), which may be difficult to determine in the pre-trial proceedings; similarly, it is difficult to establish whether a person has been continuously or habitually engaged in extortion. Bearing in mind that these aggravating circumstances are mainly determined later on in the proceedings, the conditions for applying secret surveillance are further restricted. It is not a problem in terms of qualification of the criminal offence of extortion, but further restriction of these conditions may preclude the use of secret surveillance of communications (which may be come too late in the proceedings), whereas traditional evidentiary actions may be insufficient to prove the offense. Practically speaking, the process of detecting and proving the criminal offense of extortion would have a much greater effect if the use of secret surveillance of communications would expand to other types of extortion, envisaged in Article 214 paragraphs 1 to 3 CC, relating to the basic and more severe forms extortion where the qualifying circumstance is defined by the amount of material gain.

In this respect, the secret surveillance of communications could be applied to these forms of extortion in the preliminary investigation proceedings, which would yield results

in the process of crime detection and proving the criminal liability, as well as in terms of ensuring adequate qualifications of crimes. In particular, it would be useful for determining whether the crime was committed by a single perpetrator or possibly by group or an organized criminal group over a continuous period of time. In case of establishing that the offence was committed by a single offender, it would justify the use of surveillance and the crime would be proven much more efficiently. In case of establishing a habitual or on-going criminal activity of a group or an organized criminal group, surveillance would be conducted at adequate time and the crime would be proven in the course of criminal proceedings?

As for the practical application of this special evidentiary action, there are certain limitations in terms of proving the criminal offense of extortion. Namely, the special evidentiary action of secret surveillance of communications, envisaged in Article 166 of the Criminal Procedure Code (CPC), cannot be applied to the injured party (victim) even if he/she has consented to it. The law explicitly prescribes that special investigative measures can be applied only against a person who is reasonably believed or suspected to have committed a criminal offence envisaged in Article 162 CPC, or is reasonably believed to be preparing the commission of criminal offenses envisaged in Article 161 para. 2 CPC, in conjunction with Article 161 para.1 CPC.

Bearing in mind that the typical means of extortion are threat and force, as forms of coercion, the injured party/victim is commonly threatened over the phone. Thus, the victim's voluntary consent to monitoring different forms of communications could contribute to establishing the identity of the perpetrator, recording threats and providing evidence to prove the essential element of this criminal offense.

Yet, in spite of discovering the phone number and the identity of the perpertator who could be subjected to secret surveillance of communications, there is a possibility that the threat is not repeated from the same phone number, given the well-known fact that perpetrators frequently change their telephones and phone numbers to avoid detection. Thus, a subsequent expansion of surveillance activities would practically be a waste of time in the course of collecting evidence, and it is very likely that the threat would not be recorded at all. The relevant evidence could only be provided and fully ensure by monitoring the communications of the injured party/victim, upon obtaining his/her voluntary consent. In this respect, we propose to the legislator to introduce such a provision in the current legislation. To that effect, it is necessary to precisely regulate the surveillance of the victim's communications in order to preclude possible abuses (e.g. false reporting by the victim) and misleading the course of investigation. It would contribute to a more efficient collection of evidence, fact-finding and ultimately proving the commission of this crime.

5. CONCLUSION

On the whole, the Republic of Serbia is very actively and purposefully engaged in combating the criminal act of extortion, primarily by applying traditional evidentiary action but also by taking special investigative measures, where necessary. These special evidentiary actions are highly sensitive and sophisticated, but they are essential in the process of providing evidence to prove the commission of this criminal offense.

The legislator has explicitly prescribed the criminal offenses which may be subject to issuing a court order on a secret surveillance of communications. The criminal offence of extortion is included in the enumerated criminal offences, as envisaged in Article 214

paragraph 4 of the Criminal Code, regulating the alternative cases when this crime is committed by an individual habitually engaged in extortion or by a group as an on-going activity, as well as the cases when this crime is commited by an organized criminal group (as specified in Article 214 para. 5 CC). Given the fact that the latter offenses fall within the scope of organized crime, they are under the jurisdiction of the Public Prosecution Office of Specific Jurisdiction.

On the one hand, such a solution is not bad at all because the credibility of secret surveillance of communications as a special evidence-gathering measure is reflected in proving the commision of the criminal act of extortion by taking evidentiary actions of special importance. On the other hand, the problems observed in practice point to the need to amend the conceptual mechanisms and improve the procedural aspects of evidencing and proving the commission of this criminal offence. The observed problems are reflected in the difficulty of providing evidence on the continuous commision of the criminal act of extortion by a group (Article 214 para.4 CC), which narrows the scope of application of secret surveillance of communications. Concurrently, it indicates to the possibility of expanding the use of secret surveillance to other forms of extortion (prescribed in Article 214 paragraphs 1 to 3 CC), which may be subject to secret surveillance from the outset of the proceedings. It is particularly important considering the fact that the form of extortion envisaged in Article 214 para. 4 CC is generally detected at a later stage in the proceedings, when it may be too late to secure evidence by taking these evidence-gathering activities.

In order to improve the procedural aspects of securing evidence on the commission of the criminal offense of extortion, in some cases the surveillance of communications should be extended to the injured party/victim, after obtaining his/her voluntary consent. Given the fact that extortion is commonly committed by receiving threats over the phone, monitoring of the victim's communications would contribute to securing relevant evidence on extortion and recording the communication for prospective criminal proceeding purposes, which is very important considering that perpetrators frequently change their phone numbers in order to avoid detection. Thus, instead of being used for securing probable evidence, secret surveillance of communications seems to aimed at locating the offenders that could provide the evidence.

Therefore, these legal provisions should be changed and stipulated in more precise terms. It would improve and simplify the procedural aspects of securing evidence against the perpetrators of this serious crime. Concurrently, it would contribute to preventing and counteracting the commission of this criminal offense, which is the primary objective of security and judicial authorities.

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ZNAČAJ TAJNOG NADZORA KOMUNIKACIJA U OTKRIVANJU I DOKAZIVANJU KRIVIČNOG DELA IZNUDE

Krivično delo iznude je sa jedne strane staro, klasično krivično delo, a sa druge strane i moderno krivično delo imajući u vidu stepen organizovanosti koji ga karakteriše što se i opravdalo zakonskom inkriminacijom organizovanog oblika ovog dela i to radnjom koja je izvršena od strane organizovane kriminalne grupe. Imajući u vidu da se naše zakonodavstvo borilo na različite načine protiv organizovanog kriminala, uvedene su i posebne radnje kojima se ovom vidu kriminala suprotstavljalo a to su najpre bile specijalne istražne tehnike, da bi se donošenjem, sada već i ne tako novog, Zakonika o krivičnom postupku 2011. godine pored ranijih klasičnih metoda, a današnjim dokaznim radnjama, precizirale ranije specijalne istražne tehnike, odnosno današnje posebne dokazne radnje. Autori u radu analiziraju jednu posebnu dokaznu radnju od propisanih šest i to tajni nadzor komunikacije ali u funkciji njene primene prilikom otkrivanja i dokazivanja krivičnog dela iznude, imajući u vidu da je zakonodavac eksplicitno propisao krug krivičnih dela prema kojima se posebne dokazne radnje mogu primeniti u čiji krug primene se nalaze i neki od kvalifikovanih oblika iznude. Na kraju, autori će ukazati na moguće modifikacije odredbi koje se odnose na tajni nadzor komunikacije u smislu dokazivanja iznude, a koje bi bilo valjano zakonski precizirati kako bi se unapredila procesna forma primene ove posebne dokazne radnje prilikom otkrivanja i dokazivanja krivičnog dela iznude.

Ključne reči: *iznuda, tajni nadzor komunikacije, otkrivanje, dokazivanje*

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