

Supervised Delivery: An Important Legal Tool to Fight Cross-Border Crime

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Abstract

Cross-border crime characterized by the international trafficking of objects, goods, and people continues to be one of the biggest challenges for law enforcement agencies around the world. This criminal activity is extremely profitable for drug, weapons, and people trafficking networks, which, as a result, are targeting threats to the security of the States and represent a serious threat to public health and life. In this context, the Republic of Moldova has consolidated a protection mechanism against this phenomenon by establishing legal instruments – special investigative measures. In most cases, only through these actions carried out by investigative officers is it possible to discover or arrest persons involved in human trafficking, unmasking and documenting the illicit trafficking of drugs, weapons, stolen objects, explosive materials, nuclear, and other radioactive materials, money and other objects resulting from illegal activities or if the said objects are used to commit crimes.

Keywords: criminal activity, penal trial, trafficking, cross-border crime

1. Introduction

The modernization and diversification of the cross-border criminal phenomenon, acquiring over the years an organised, conspiratorial, and international character, has forced the national institutions with attributions in the field, as well as the entire international community to be aware of the danger presented by this scourge and establish certain legal instruments that will serve as a protective shield to combat the crimes that encompass this phenomenon. Thus, we firmly believe that the most important and effective legal tools against cross-border crime are special investigative measures. These represent a part and a structural element of the special investigation activity carried out by the investigation officers based on the grounds and in compliance with the conditions provided by the legislation, to establish valuable operative information, for the fight against crime, including cross-border crime, for the defence of the rights and freedoms of individuals, society, and the state. We believe, like Glavan, that the special investigative measures have an informative nature of search and are aimed at obtaining information about the people who conceive, prepare, or commit crimes, about the presence of material traces of illegal activities, about the whereabouts of the people who they hide from the criminal investigation and the court, as well as about the missing persons [7, p.352]. This operational information obtained in the course of special investigative activity can be divided into information that can later become evidence within the meaning of the Code of Criminal Procedure, that is, information verified from the point of view of admissibility, relevance, and conclusiveness, and information that for certain reasons cannot become evidence, but which can be used as indicative information in the detection and investigation of crimes, for example, for the preparation and performance of a search or other criminal prosecution or special investigative measures (Art. 24 Law no. 59/2012) [8, p.10]. In what follows, we will point out

the content of the special investigation measure "Supervised delivery" and the contribution of this special investigation measure against cross-border crime. At the same time, knowing the content of the special investigative measures is fundamental for knowing their essence. This paper will not present our vision on the tactical aspects of implementing the pre-noted special measure, limiting only to the legislative, doctrinal approach to its content and its role in combating international crimes. The organization and tactics of carrying out the special investigation measure can be said to be largely determined by the investigative officers who carry them out, depending on the situation created and the possibilities available (here we refer to the technical means that capture the information in stealth mode, confidential device availability, etc.). As a rule, the organization and tactics of special investigative measures are attributed to the field of classified information, therefore these issues are analysed in the special secret literature and are studied in the framework of special professional training courses in the field of special investigations.

2. Applied methods and materials

In the process of developing the study, the doctrinal material, norms, activity reports, and scientific works from the scope of the special investigation activity were used. Also, the research of this special investigative measure was made possible by applying several scientific research methods of law theory: the logical method, the method of comparative analysis, systemic analysis, statistics, etc. At the same time, the works of local scholars, empirical information as well and the opinions of employees from the specialized subdivisions were used.

3. Basic content

Initially, we want to analyse the notion of the measure, regulated in the domestic legislation concerning the legislation of other states. Following the new changes to the legislation that will enter into force starting from 01.01.2024, the special investigation measure supervised delivery will be found in the content of art. 138⁸ of the Criminal Procedure Code of the Republic of Moldova, and *represents the movement under supervision of objects, goods, or other values (including substances, means of payment, or other financial instruments) that come from the commission of a crime or that are intended to be committed of a crime on the territory of the Republic of Moldova or outside its borders, to investigate a crime or identify the persons involved in its commission*" [2]. However, currently, this special investigative measure is called controlled delivery but the content is identical to the supervised delivery stipulated in the new version of the Code of Criminal Procedure of the Republic of Moldova. The notion of supervised (controlled) delivery is also found in other normative acts. For example, Art. 225 of the Customs Code of the Republic of Moldova states that: "to combat the international illicit traffic of narcotic and psychotropic substances and to detect the persons involved in such operations, the customs bodies of the Republic of Moldova use, for each case by bilateral agreements, with the participation of the customs bodies and other competent bodies of the respective countries, the method of controlled delivery, i.e. they allow the introduction, removal or transmission, under their supervision, through the Republic of Moldova of narcotic and psychotropic substances included in illicit traffic" [4]. The Criminal Procedure Code of Romania specifies that: "supervised delivery" means the surveillance and research technique that allows the entry, transit, or exit from the territory of the country of goods in respect of which there is suspicion regarding the illegal nature of their possession or acquisition, under

the supervision or with the authorization of the competent authorities, to investigate a crime or identify the persons involved in its commission [3, art.138]. Also, the notion of supervised or controlled delivery in the monographs of the Russian author Šumilov A.Iu. considers supervised delivery to be a set of special investigation measures and actions carried out with the consent and secret control of the operative body to approve the circuit of objects or goods whose free trade is prohibited or limited, as well as acquired objects criminally or that keep on them the traces of the crime, as well as the weapons and the means of committing the crime, to effectively decide the tasks of the special investigative activity, as well as the discovery, prevention and investigation of crimes [15, p.72; 17, p.85]. Another Russian author, Mihailov VI, defines the special investigative measure "supervised (controlled) delivery" as an action carried out in the case of the existence of the grounds indicated in the law and in compliance with the established procedure, which consists of the delivery under the control of legal bodies, empowered with the right to carry out the activity special investigations of goods and objects to discover and prevent the crime and the people involved in their commission [13, p.25]. At the same time, the distinguished Russian author Zahartev SI defines supervised (controlled) delivery as a special investigative measure that consists of the transportation of goods and objects under the confidential control of bodies that exercise special investigative activity [12, p.135]. Another Russian author, A.A. Ciuvilev, supports the opinion that the essence of the supervised (controlled) delivery consists in the transmission by operative workers or under their control, of objects or money, to persons suspected of committing crimes, to unmask them [14, p.46]. Also, a relevant notion of controlled delivery can be found in the "Special Encyclopedia" of the United States DEA (Drug Enforcement Administration of the United States Department of Justice). Arising from the field of activity of the Department nominated, supervised delivery is understood as a procedure in which the illegal consignment of narcotic or psychotropic substances, discovered by law enforcement agencies, is accepted to circulate on the territory of one or more countries, with the consent and control of the authorities department to establish the identification and documentation of the persons involved in the commission of the given crime. In the same vein, on an international level, the notion of supervised delivery is also reflected in the content of Art. 2 of the United Nations Convention against Transnational Organized Crime, signed on December 12, 2000, in Palermo, Italy. In the given article, the determination of supervised delivery is provided for as a measure, within which the transportation into the country, from the country, or transit through the territory of one or more countries, of illegal or suspicious consignments of goods is accepted, with the consent and under the supervision of the competent bodies, to investigate some crimes and reveal the persons who participate in the commission of this crime [5]. Likewise, controlled delivery is provided for in the Police Cooperation Convention for South-Eastern Europe, adopted on 05.05.2006 la Viena, Austria. Thus according to Art. 15 convention, based on a letter of request from a contracting party, another contracting party may allow, if necessary, in the case of the investigation of crimes that give rise to extradition, the supervised delivery on its territory, in particular of the transport of drugs, precursors, firearms, explosives, counterfeit currency, as well as goods that come from the commission of a crime or are intended for the commission of a crime, when the requesting contracting party reasons that, without these measures, the identification of the perpetrators or the distribution channels would be impossible or much more difficult [6. p.281]. In the context of the opinions presented, we propose our notion of the special investigative measure of supervised delivery – it is understood as a special

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investigative measure that consists in the transportation of objects, goods, substances, or productions, the free realization of which is prohibited or the circuit of which is limited, under the confidential control of investigative officers, to investigate crimes or identify the persons involved in their commission. Supervised delivery is carried out based on the ordinance ordered by the prosecutor. This ordinance regarding the disposition of the measure must contain, in addition to the elements provided for in Art. 255 of the Code of Criminal Procedure, the identification data of the person in respect of whom the measure is ordered if known, the evidence justifying the interference in private life, the mention regarding the training of persons whose identity is a state secret, the identification data of the officers of investigations assigned to carry out and record the special investigation measure, the circumstances resulting from the illicit character of the goods that are to enter, transit or leave the territory of the country and the delivery method as well as other data that are important for the disposition, authorizing and carrying out the special investigative measure [2].

In the situation where supervised delivery is to be requested in the framework of combating cross-border crimes, there must necessarily be:

- interpellations of international organizations and legal authorities of other states following the international treaties to which the Republic of Moldova is a party;
- requests for power of attorney from the legal bodies of other states following the international treaties to which the Republic of Moldova is a party [16, p.120-126].

Supervised delivery can only be ordered if the discovery or arrest of persons involved in human trafficking, illegal transport of drugs, weapons, stolen objects, explosive materials, nuclear materials, other radioactive materials, sums of money, and other objects resulting from illegal activities or if the mentioned objects are used to commit crimes [2]. The author Roman D. opines that the goods and objects, the circulation of which must be controlled, are: 1) objects, substances, and production, the free realization of which is prohibited or limited (narcotic substances, weapons, objects of worship, precious stones, metals precious, etc.); 2) objects obtained by criminal means or which have kept traces of the crime on them; 3) the instruments and means of committing the crime (money, valuables, documents, weapons, etc.) [10, p.88]. The Russian author Vaghin OA mentions that the object of controlled delivery can be:

- items named in the official delivery contract;
- objects that constitute a tool or means of the crime;
- objects obtained by criminal means or which constitute the object of the crime (cultural values, precious metals or stones, jewels, strategic materials, contraband objects);
- objects in prohibited or restricted circulation (narcotic substances, weapons, ammunition, explosive substances) [11, p.30; 18, p.95].

The content of the special investigation measure is composed of the following actions:

- Supervision of goods transiting the territory of the Republic of Moldova;
- Identification of the persons involved in this transit process;
- Investigating all the circumstances in which the transit of the goods takes place [7, p.352].

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The author Roman D. similarly nominates these actions that are the basis of supervised delivery only under the name of objectives:

- 1) identification of the supply channels of prohibited objects and substances for the civil circuit;
- 2) identification of senders and recipients; establishing (through the use of controlled objects) persons who have committed or are committing crimes;
- 3) ensuring the evidentiary basis of the criminal activity, i.e. creating the conditions in which the traces of the criminal act will be reflected in admissible sources, according to the provisions of the criminal procedure law [10, p.89].

Ways of transporting the controlled object are deliveries made:

- 1) by monitoring objects in railway, car, and air transport, including those transported in hidden places;
- 2) by monitoring postal items (letters, parcels, parcels, including to the interposed recipient), as well as luggage, other objects transported by the courier, or those disguised as delivery of goods and objects.

Depending on the tactical procedures applied, supervised deliveries can be: a) simple or ordinary (when the discovered objects are not picked up or substituted); b) clean, when, to reduce the risk of losing the controlled objects or for security reasons, they are removed in whole or in part, being replaced by a mould [13, p.10].

Also, they can take the following forms: a) external - undertaken according to the order established by international agreements and contracts, on the territory of foreign countries; b) internal - implemented only on the territory of a country; c) transit (with the passage through the territory of a state), they are usually carried out at the request of the legal bodies of other states; d) accompanied, i.e. the object controlled by the legal authorities is among the things, objects or luggage along the way with the possessor or with another accompanying person; e) unaccompanied, i.e. the controlled object is in unaccompanied cargo, unaccompanied baggage or postal shipment [1, p.122; 12, p.136].

Supervised delivery expressly requires that all states through which illegal or suspicious shipments are transited must:

1. agree with the entry into their territory of illegal or suspicious transport and its exit from the territory of the state;
2. guarantee that the illegal or suspicious transport is permanently supervised by the competent authorities;
3. guarantee that the prosecutor, criminal investigation bodies, or other competent state authorities are notified regarding the outcome of the criminal investigation against persons accused of crimes that are the object of the special investigation measure provided for by the Code of Criminal Procedure of the Republic of Moldova [2].

These requirements shall not apply if an amended international convention or international agreement provides otherwise. According to the Cross-Border Operations Manual, there are different types of supervised deliveries depending on national legislation.

Not all types are known to all Member States: with undercover agents, with physical control, without physical control (sometimes called monitored delivery), with informants, through drug substitution [9]. Supervised delivery is only applied in criminal proceedings and is ordered for up to 30 days, the term starting to run from the date of authorization, and it can be extended, motivated, in the same way, up to 180 days calculated cumulatively, with the exceptions established by law. Each extension of the duration of the measure cannot exceed 30 days. Suppose the term for which the special investigative measure of supervised delivery was authorized was extended up to 180 days calculated cumulatively. In that case, it is prohibited to authorize the special investigative measure for the same reasons and regarding the same persons, except in cases of the emergence of new circumstances, for carrying out undercover investigations or investigations of organized crime, corruption and related crimes of corruption, against state security, of a terrorist nature, money laundering or terrorist financing, cases in which authorization to carry out the measure is allowed special investigations up to 360 days calculated cumulatively [2]. After the completion of the special investigative measure and finding that there is no need to extend its implementation or, in case of necessity, during its implementation, the investigative officer designated for its implementation draws up a report on the recording of the results of the supervised delivery special investigative measure. The responsible bodies are obliged to draw up, upon completion of the supervised delivery on the territory of the Republic of Moldova, a report on the activities carried out, which they submit to the criminal investigation officer or the prosecutor.

4. Conclusion

An effective means of combating cross-border crime is the special investment measures, or in the process of combating cross-border crime, the investigative officers of the specialized subdivisions are obliged to identify the persons involved in this illicit process, the knowledge of all the circumstances in which the transit of goods takes place as well as the acts committed by them. To counter these types of crimes, the role of applying special investigative measures also results from the need to establish the mechanism for committing criminal actions, the place where these crimes were committed, and last but not least the route taken by the criminal, that only from the generic of this it follows that the act is consummated from the moment when the territories of at least two states were targeted.

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