

SPECIAL INVESTIGATIVE ACTIONS IN BALTIC COUNTRIES

Abstract

The authors in this paper deal with special investigative actions in Baltic countries. Special investigative measures today represent one of the most important measures in the fight against serious criminal offences, but its improper use endangers fundamental human rights, especially the right to privacy and the right to a fair trial. The article is divided into three main parts. After the introductory remarks, the authors elaborate the Lithuanian criminal procedure legislation, which influenced development of the European Court of Human Rights's jurisprudence in the field of the undercover investigator. Latvian solutions are explained in the next part and its main characteristic are numerous special investigative measures. Finally, the authors explain Estonian legislation. The authors specifically consider and analyse the positions of the European Court of Human Rights through judgments rendered in this field. A wide range of special investigative actions indicates their diversity, but mostly the solutions of all three legal frameworks are in line with the standards of the European Court of Human Rights.

Keywords: *special investigative actions, right to privacy, right to a fair trial, Baltic countries, incitement.*

1. Special Investigative Measures in the Light of the Case Law of the European Court of Human Rights – Introductory Remarks

Special investigative measures today represent one of the most important measures in the fight against serious criminal offences. Almost every country prescribes some form of these investigative measures. The Baltic countries are no exception. However, these states (Lithuania, Latvia and Estonia) have one common characteristic, and that is that in addition to the codes of criminal procedures, this matter is regulated by certain legal texts dedicated exclusively to special evidentiary actions. The improper use of special investigative measures endangers fundamental human rights. For these considerations, particularly important are the right to privacy and the right to a fair trial.

* PhD, Associate Professor, Faculty of Law, University of Kragujevac, Kragujevac, Serbia, e-mail: vturanjanin@jura.kg.ac.rs

** LLM, Trainee, Kragujevac, Serbia, e-mail: stanisavljevicjelena06@gmail.com

The European Convention on Human Rights and Fundamental Freedoms (hereinafter: ECHR) in Article 8 prescribes four aspects of the right to respect for private and family life: the right to private life, right to family life, right to home, and right to correspondence. As stated in the second paragraph of this article, no public authority may interfere with the exercise of this right unless it is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, or economic well-being, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of others' rights and freedoms. There are many aspects of Article 8, so relating case-law is very comprehensive (de Hert, 2005, p. 73). Interception of communications is a type of invasion of the privacy of correspondence, which is guaranteed under the Article 8 of the ECHR. In the well-known case *Klass and Others v. Germany*, the European Court of Human Rights (hereinafter: ECtHR) stressed that telephone conversations are protected by the principles of "private life" and "correspondence" as defined by Article 8. It was repeated in *Malone v. The United Kingdom* and countless other decisions (Turanjanin, 2022).

Another, for these considerations, important article, is Article 6, which, in the criminal limb, applies to persons subjected to a criminal charge (Toney, 2002, p. 434). Article 6 consists of three paragraphs: the first of these establishes a set of broad rules that apply to the two primary types of trials in modern judicial systems: civil and administrative trials and criminal trials. Furthermore, the right to a "fair and public hearing within a reasonable time before an independent and impartial tribunal constituted by law" is enshrined in paragraph 1, while second and third provision of Article 6 solely apply to criminal proceedings: the presumption of innocence is acknowledged in paragraph 2, while in paragraph 3 a list of minimum guarantees for criminal trials is provided (Schabas, 2015, pp. 270-271).

As the ECtHR stated in *Ibrahim* judgment, what constitutes a fair trial cannot be the subject of a single unvarying rule but must depend on the circumstances of the particular case. In each case, the ECtHR's primary concern is to evaluate the overall fairness of the criminal proceedings. Compliance with the requirements of a fair trial must be assessed in each case in light of the whole progress of the proceedings, rather than on the basis of a single feature or incident (*Ibrahim and Others v. the United Kingdom*, paras. 250-251). However, the application of special investigative measures may endanger aspects of Article 6 of the ECHR (Pajčić & Valković, 2012, p. 756; Schabas, 2015, p. 320). However, the use of special investigative methods cannot in itself infringe the right to a fair trial. The national law regulates the admissibility of evidence, so, the national courts have to assess the evidence before them (Turanjanin, 2020). The ECtHR, however, must ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (Turanjanin, 2022; see also Čvorović, 2016, pp. 43-53).

In this paper, it will be dealt with the criminal procedure legislation of the Baltic countries pertaining to special investigative actions, starting with the Lithuanian one, which had a significant impact on the development of the jurisprudence of the ECtHR. The relevant ECtHR jurisprudence applicable to special investigative actions in those three countries will be also examined.

2. Special Investigative Actions in Lithuania

2.1. General Remarks and ECtHR's Position

In Lithuania, the country of origin of fictional Hannibal Lecter, the Law on Operational Activities (2002) (hereinafter: LOA) regulates the matter of operational activities. Through this legal text among other things, principles and tasks of operational activities are regulated, as well as rights and duties of the bodies that perform them, participation in operational activities, the use of collected information, funding and control of these activities, and scrutiny over them (Article 1 of the LOA). The term *operational activities* includes the overt and covert intelligence activities. These activities are performed by entities of operational activities, while the procedure is laid down by the LOA. The LOA also defines targets of operational activities (Article 3 of the LOA).

According to Article 6 of the LOA, operational activities shall be performed without violation of rights and freedoms of an individual and citizens. Particularly important is that provoking a person into committing criminal offence is prohibited. This is a provision that exists almost in every criminal procedure law, and under this legal text the provocation is pressure as well as active incitement or instigation to commit a criminal offence. Under the provocation, the person has no freedom of choice and it results in committing or attempting to commit a criminal offence in a situation in which this was not a plan. This is one of the key provisions for special investigative actions, and, particularly, for an undercover investigator.

The ECtHR in a few cases against Lithuania dealt with this issue.¹ The ECtHR in *Ramanauskas v. Lithuania* defines entrapment as an action that is opposed to a legitimate undercover special operation. This is a situation in which the involved officers do not essentially passively investigate a potential criminal activity. In fact, they exert an influence to a person to incite him to commit a criminal offence. Without incitement this person would not have committed this offence, but under the incitement they have a possibility to establish a criminal offence and provide evidence for further prosecution. It is not of importance if they are members of the police or security agency or persons acting on their instructions (*Ramanauskas v. Lithuania*, para. 55; Bronitt & Roche, 2000, p. 85).² In this sphere Article 6 of the ECHR and the requirement for a fair trial (Turanjanin, 2021, pp. 73-87) are extremely important. The admissibility of such evidence does not depend on the nature of the criminal offences, but numerous and various elements have a role in its determination (Deprez, 2017, p. 513). The right to a fair trial demands a fair and suitable justice administration (Floinn, 2017, pp. 104-105).

¹ Lithuania developed its criminal procedure law under ECtHR influence. One of the most famous cases is *Drelingas v. Lithuania*. See more in: Minervini, 2020.

² This case concerned typical corruption matters with undercover elements (see more in Potulski, 2011, p. 613; Constantinou, 2017, p. 489; Keane & McKeown, 2012, p. 71; Easton, 2014, p. 102; Meese, 2017, p. 307; Glas, 2018, p. 58; Skorupka, 2021, p. 112). Particularly important is the fact that the burden of proof in a case based on the argument that the applicant was incited to commit the crime must be on prosecution. See more in Viebig, 2016, pp. 249-250.

The important issue is when an investigation is conducted in an “essentially passive” manner. The ECtHR in every case has to examine the reasons subjacent the covert operation as well as the conduct of the authorities carrying it out. There has to be objective suspicion that the suspected/accused person is entangled in criminal activity or predisposed to commit a criminal offence.³

The ECtHR has clarified in numerous decisions its position regarding the use of undercover investigators and the use of their evidence in criminal proceedings (Stariene, 2009, p. 266). It observed that it was aware of the problems that the police had in their search for and gathering evidence in order to detect and investigate criminal offences. They are increasingly needed to deploy undercover agents, informers, and covert tactics to carry out this mission, particularly in the fight against organized crime and corruption (*Ramanauskas v. Lithuania*, para. 49; Brady, 2014, p. 39).⁴ The ECtHR’s approach in *Teixeira de Castro* was endorsed later in *Ramanauskas v. Lithuania* (Pitcher, 2018, p. 46). Additionally, the ECtHR emphasized that corruption today is one of the major problems. The judicial sphere is not an exception, which is confirmed by EU regulations.⁵ The use of undercover techniques has to be kept within clear and defined limits. There is a clear risk of police incitement here, although the use of undercover investigators cannot in itself infringe the rights guaranteed by Article 6 of the ECHR (*Ramanauskas v. Lithuania*, para. 51).⁶

In the preliminary investigation stage, the use of different sources, such as anonymous informants, can be justified. However, it is a different matter to use such sources at the trial phase of the criminal procedure. Only if proper and sufficient protections against misuse are taken, such usage can be justified. Among other, there has to exist a clear and foreseeable system for authorizing, implementing, and supervising the investigative procedures (*Ramanauskas v. Lithuania*, para. 51; Burda & Trellova, 2019,

³ The ECtHR considers a variety of issues before making the decision. For instance, in the early seminal case of *Teixeira de Castro v. Portugal* (see paras. 37-38) the ECtHR took into account, among other things, the applicant’s lack of criminal record, the fact that no investigation into him had been opened, that he was unidentified to law enforcement personnel etc. (Puscasu, 2010 (on drug cases before the ECtHR see Golichenko, Stolz, & Ezer, 2018)). It was determined that the agents’ conduct went beyond those of undercover agents since they initiated the crime and there was no evidence that the crime would have occurred without their assistance. A previous criminal record does not necessarily indicate a proclivity to perpetrate a crime (*Constantin and Stoian v. Romania*, para. 55). However, the applicant’s familiarity with the modalities of the offence (*Virgil Dan Vasile v. Romania*, para. 53) and his failure to withdraw from the deal despite a number of opportunities to do so or to report the offence to the authorities have been considered by the ECtHR to be indicative of pre-existing criminal activity or intent (*Gorgievski v. the former Yugoslav Republic of Macedonia*, para. 53; *Matanović v. Croatia*, paras. 142-143).

⁴ It is worthy to say here that judge Costa noted similarities between the case of *Bykov v. Russia* and *Ramanauskas*. See Gonta, 2011, p. 130.

⁵ Numerous EU documents deal with the corruption, such as Protocol to the Convention on the Protection of European Communities’ financial interests, Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the EU, Framework Decision 2003/568/JHA on Combating Corruption in the Private Sector, Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the EU, Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law etc. (see more in Klimek, 2017, pp. 550-554 and Banović, Bejatović & Turanjanin, 2020, pp. 291-492).

⁶ See further Balsamo, 2018, p. 109; Ažubalyte & Fedosiuk, 2021, p. 449.

p. 65). The ECtHR in *Bannikova v. Russia* and *Tchokhonelidze v. Georgia* emphasized that the judicial supervision was the most appropriate mean, but the supervision by a prosecutor also could be appropriate (*Bannikova v. Russia*, para. 50; *Tchokhonelidze v. Georgia*, para. 51 (Levanon, 2016, p. 36)).⁷ Furthermore, police incitement is a matter of public interest, which cannot justify the use of such illegal evidence (Youngs, 2014, p. 191). This can expose the suspected/accused to the risk of complete deprivation of a fair trial (*Ramanauskas v. Lithuania*, para. 54; Aqubardia, 2020, p. 211; Chedraui, 2010, p. 219; Ramos, 2016, p. 412; Turanjanin, 2022, p. 44).⁸

In *Ramanauskas v. Lithuania*, the ECtHR concluded that simply arguing by national authorities that the officers were acting “in a private capacity” was not a reason for exemption from liability under the ECHR. Human rights violations are perpetrated by individuals who do not implement state policy but rather exceed their official authority (Kälin & Künzli, 2019, p. 70). Such actions are nevertheless attributable to the state, provided the perpetrators are acting not in their private but in an official capacity or pretend to do so. Furthermore, the undercover agents could be State agents or private individuals acting on their orders and under their supervision. A complaint about the inducement to commit an infraction by a private party who was not acting under the orders or direction of the officials, on the other hand, is investigated under the basic norms of evidence administration rather than as an issue of entrapment.

The case of *Malininas v. Lithuania* highlights the problems of controlling police involved in secret operations (Žunić & Dukić, 2012, p. 580) in which the ECtHR recalled *Ramanauskas* judgment. It defined entrapment as a violation of Article 6 paragraph 1 of the ECHR, as opposed to the employment of lawful undercover techniques in criminal investigations, for which proper safeguards against abuse were required. It determined that its task was to analyse the quality of the domestic courts’ evaluation of the alleged entrapment and ensure that the defendant’s rights of defence, including the right to adversarial procedures and equality of arms, had been sufficiently protected. Really interesting is the fact that the ECtHR distinguishes *agent provocateur* from undercover investigator. Additionally, the entrapment could be direct and indirect (*Miliniene v. Lithuania*).

2.2. On Individual Special Evidentiary Actions

In the first place, the LOA defines the covert monitoring of postal items, document items, money orders and documents and the use of technical means thereof. The request for this special investigative measure is submitted by the prosecutor. This application should be approved by the chairmen of regional courts or the chairmen of the criminal divisions of these courts. It is a special procedure prescribed by law. It shall be permissible to take out these activities pursuant to a decision by the prosecutors in urgent instances when a threat

⁷ The ECtHR highlighted in *Bannikova* that where an accused asserts that he was incited by police agents – and the assertion is not clearly false – the prosecution must provide evidence that there was no entrapment. See more in Gorlitz *et al.*, 2019, p. 500.

⁸ The second *Ramanauskas* judgment is quite different (*Ramanauskas v. Lithuania* (no. 2). See Wallace, 2009, p. 514; Moonen, 2010, p. 132.

to human life, health, property, public or state security exists. In such circumstances, the prosecutor who made the decision must make an application to a judge within 24 hours for confirmation of the lawfulness or the justifications of the acts by a reasoned ruling. If the deadline falls on a day off or a holiday, the application must be filed the day after the holiday or a day off. The actions will be discontinued if the court does not affirm the reasons of the actions with a reasoned judgement, and the information obtained in the course of actions will be destroyed immediately (Art. 10, paras. 1-3 of the LOA).

This special investigative action will be permitted for a maximum of 3 months, but this period may be extended, using the same procedure as for the approval of these activities. The number of extensions is not limited, but each extension must be for a specific amount of time (Art. 10, paras. 5 and 6 of the LOA).

Upon handing down a reasoned ruling on this special investigative action, the head of an entity of operational activities or his authorised deputy shall immediately send one copy of the ruling to the Prosecutor General or the Deputy Prosecutor General authorized by him. If a prosecutor refuses to submit an application for the permission of the special investigative action, the head of the operational activities entity or his authorised deputy has the right to refer the matter to a superior prosecutor who has the authority to submit such application. The prosecutor's refusal must be documented in writing. The prosecutor who has decided not to file an application for permission of the aforementioned acts must notify the Prosecutor General or the Deputy Prosecutor General to whom he has delegated authority. The superior prosecutor's decision will be final. When the chairman of a regional court's criminal division issues a reasoned decision refusing to authorize the acts, the prosecutor who submitted the application has the right to appeal to the regional court's chairman. The chairman of the regional court's decision will be final (Art. 10, paras. 7-9 of the LOA).

An institution authorised by the Government shall notify a telecommunications operator or provider of telecommunications services upon the handing down of a ruling by a court and, in urgent cases, upon the taking of a decision by the prosecutor, indicating the application number, date of the ruling and the court that has handed down the ruling or the date of the decision of the prosecutor, the prosecutor who has taken the decision, as well as the duration. The officer filing the notification in line with the legal procedure has responsibility for the content of the notification intended for the telecommunications operator or supplier of telecommunications services conforming to the court judgment. The telecommunications operator or service provider must provide the technical capability to implement the monitoring of information transmitted across telecommunications facilities. Technical commands sent to a telecommunications operator's network to start or stop wiretapping or other monitoring of information transmitted across telecommunications networks must be kept in a secure manner that prevents the data of the commands sent or received from being modified by the entity of operational activities that sent the command or the telecommunications operator that received the command. The Prosecutor General or a prosecutor authorized by him must have access to the data (Art. 10, paras. 10-11 of the LOA).

The next important special investigative measure is covert entry in residential and non-residential premises and vehicles as well as inspection. This special investigative measure authorises the chairmen of regional courts or the chairmen of criminal divisions of these courts, based to the reasoned applications of the Prosecutor General or the Deputy Prosecutors General. This special investigative measure can be used for a maximum of three months.

The authorized actions formally having the characteristics of a criminal act or other infringement and carried out with the goal of defending individual rights and freedoms, property, public and state security as protected under law against criminal encroachment are referred to as “mode of conduct imitating a criminal act” (Article 3 point 19 of the LOA). On the basis of a reasoned application by the head of an entity of operational activities or his authorised deputy, the Prosecutor General or a Deputy Prosecutor General authorised by him, or the chief prosecutors of regional prosecutor’s offices or the deputy chief prosecutors authorised by them, shall authorise the mode of conduct imitating a criminal act. A manner of action simulating a criminal act prepared by an entity of operational activities may be authorized for a period of not more than six months. This time frame could be extended (Art. 12 paras. 1-3 of the LOA).

Prior to undertaking actions in the mode of conduct that imitates a criminal act, a person must be familiarized with the defined action limitations for the mode in line with the method established by the primary institutions of operational activities (Art. 12 of the LOA). This operation was a subject in cases *Malininas v. Lithuania* and *Lalas v. Lithuania*, in conjunction with an undercover agent.

Finally, the LOA defines a controlled delivery, as the approved action that allows illicit or goods that appear to be illicit and other objects to transfer into, through, or out of the Republic of Lithuania’s territory under the supervision of a unit of operational activities with the goal of detecting criminal acts and identifying those who are preparing, committing or have committed them (Art. 3 point 20 of the LOA). The Prosecutor General or the Deputy Prosecutor General authorised by him, or the chief prosecutors of regional prosecutor’s offices or the deputy chief prosecutors authorised by them, may authorize controlled delivery if the head of an entity of operational activities or his authorised deputy submits a reasoned application.

The provisions about duration extension, procedure upon handing down a reasoned ruling on operational activities and cases of prosecutor’s refusal to submit a request for the authorization are the same for all operational activities.

3. Special Investigative Actions in Latvia

3.1. General Remarks

Latvia has developed a very interesting system of special investigative measures. In the first place, it is worthy to mention that the Latvian Law of Criminal Procedure (hereinafter: LCP) regulates the admissibility of evidence. Section 130 of the LCP states

that factual information obtained during criminal proceedings is admissible if it was obtained and authorized in line with the LCP's procedures. Section 11 of the LCP lays out a comprehensive list of special investigative measures (*speciālās izmeklēšanas darbības*). Undercover activities were, for years, regulated exclusively by the Operational Activities Law (hereinafter: OAL), but the LCP from 1 October 2005 supplements the existing framework.

If the acquisition of information about facts is required to identify conditions to be proven in criminal proceedings, special investigative operations must be carried out without telling the person involved in the criminal proceedings or others who could supply such information (Section 210). Only information obtained in connection with a criminal offence that: 1) is necessary for ascertaining conditions to be proven in criminal proceedings; 2) indicates the commission of other criminal offences, or the conditions of their commission; or 3) is necessary for the prevention of immediate and significant threats to public security shall be recorded during the course of a special investigative action (Section 211).

Except in defined situations, special investigative actions must be carried out on the basis of an investigating judge's decision. The evidence obtained as a product of a special investigative action may not be used in the evidence process if the person managing the proceedings has not followed the procedures for obtaining permission. The judge will rule on the admissibility of the collected evidence as well as the activities with removed objects if the investigative action was not authorized or was carried out illegally (Section 214). There are 11 types of special investigative actions, which will be elaborated below (Section 215).

3.2. *Special Investigative Actions*

In the first place, the LCP regulates control of legal correspondence. According to the LCP, if there are grounds to believe that the consignment contains or may contain information regarding facts included in the circumstances to be proven, postal institutions or persons who provide consignment delivery services shall perform control of a consignment placed under their liability, without the knowledge of the sender and addressee, based on a decision of an investigating judge, if the acquisition of necessary information is impossible or hindered without the knowledge of the sender and addressee (Section 217).

Secondly, if there are grounds to believe that the conversation or transferred information may contain information regarding facts included in circumstances to be proven, and if the acquisition of necessary information is not possible without a warrant, the control of telephones and other means of communications without the knowledge of the members of a conversation or the sender and recipient of information shall be performed, on the basis of an investigating judge's decision. If there are grounds to believe that a criminal offence may be directed against such persons or their immediate family, or if such person is involved or may be enlisted in the committing of a criminal offence, the control of telephones and other means of communication with the written consent of a member of a conversation, or the sender or recipient of information, shall be performed (Section 218).

At the third place is control of data located in an automated data processing system. This special investigative measure shall be performed if there are grounds to believe that the information in the specific system may contain information regarding facts included in circumstances to be proven. As in previous measures, an investigating judge's decision is required, except in defined circumstances (Section 219).

Fourth, without the knowledge of the owner, possessor, or maintainer of such system, the interception, collection, and recording of data transmitted with the assistance of an automated data processing system using communication devices located in Latvian territory can be carried out (Section 220). At the fifth place is the regulated audio-control or video-control of a site (Section 221). Furthermore, if there are grounds to believe that the person's conversations, or other sounds, may contain information about facts included in circumstances to be proven, and if the acquisition of necessary information is not possible without such operation, the audio-control of the person without the person's knowledge shall be carried out, on the basis of a decision of an investigating judge (Section 222).

Surveillance and tracking of a person without his/her knowledge may be carried out if there are reasonable grounds to believe that the person's behaviour, as well as contact with other people, may contain information important for criminal procedure, for a period of up to 30 days, which an investigating judge may extend if necessary (Section 223). Surveillance of an object or a place may be carried out on the basis of an investigating judge's decision if there are reasonable grounds to assume that information about facts relevant to the circumstances to be established could be obtained as a result of surveillance (Section 224).

Section 225 regulates investigative test, which is, firstly, created for designing a situation or characteristic circumstances of the person's daily activities that are conducive to the criminal intent disclosure. Secondly, it is important to record the person's actions in those circumstances. These tests are performed on the basis of an investigating judge's decision in case there are grounds for suspicion that a person is preparing to engage in criminal activity or he/she has previously committed a criminal offence or has already began the same criminal activities; then, an actual criminal offence may be interrupted within the context of on-going criminal proceedings or information about the facts to be proved may be obtained by means of the operation, or the gathering of information about these facts. Inciting a person to commit a certain conduct, influencing a person by violence, threats, or extortion, or taking advantage of a person's weakness are all forbidden under Section 225 (3). However, as the ECtHR concluded in *Baltinš v. Latvia*, this element lied in the investigative tests' nature and it appeared that there existed rather small distinction between provocation and legitimate undercover techniques (*Baltinš v. Latvia*, para. 61).⁹

In the tenth place, the LCP regulates the acquisition of comparative samples in a special manner (see more in Stanisavljević, 2021). These samples may be provided on the basis of an investigating judge's decision if the interests of the criminal proceeding

⁹ The introduction of evidence gathered as a result of police instigation, according to the ECtHR, would jeopardize the requirement of trial fairness enshrined in Article 6 (see *Teixeira de Castro v. Portugal*, para. 36, *Bannikova v. Russia*, paras. 33-65; Turanjanin, 2022).

require that suspicions about a person's involvement in the commission of a criminal offence not be disclosed to that person (Section 226). Finally, if a separate stage of a single criminal offence or mutually connected criminal offences is determined on the basis of an investigating judge's decision, but immediately discontinuing such stage eliminates the opportunity to prevent another criminal offence, or ascertain all involved persons, particularly the organisers and commissioning parties, or all the purposes of the criminal activity, control of the criminal activity may be performed (Section 227).

The LCP elaborates how the results of special investigative actions can be used for other purposes, how to familiarize it with materials that are not related to a criminal case, how to take actions with the results of a special investigative action that are not relevant to criminal proceedings, how to protect information in criminal proceedings, and how to protect information contained in materials that are not related to a criminal case.

The Latvian OAL establishes the legal foundation, principles, tasks, objectives, and substance of operational activities, the process, forms, and types of such activities, the official status, rights, responsibilities, and responsibilities of officials of bodies performing operational activities, the financing, supervision, and monitoring of such operations. According to Section 1, operational activities include the overt as well as covert activities of specially authorised officials whose goals are to protect people's lives and health, their rights and freedoms, their honour, dignity, and property, as well as the Constitution, the political system, national independence and territorial integrity, the state's defence, economic, scientific, and technological capabilities, and state official secrets (Section 1 of the OAL). As it can be seen, all operations, covert or otherwise, of specially authorised State institutions aimed at protecting individuals, the State's independence and sovereignty, the constitutional system, the country's economic and scientific potential, and classified information from external or internal threats are referred to as *operational activities* (Section 2 of the OAL). The substance of operational activities is operational activities' measures and the methods of their implementation, while the activities are regulated by Section 6.

Permission to carry out such operational activities measures may be granted for a period of up to three months, with the ability to be extended for another three months if justified. The above-mentioned authorisation may be extended an unlimited number of times; nevertheless, performance of the relevant operational activities measures is only permitted while the investigation is underway. Operational activities measures may be carried out with the approval of a prosecutor in cases where immediate action is required to prevent or detect terrorism, murder, gangsterism, riots, or other serious or especially serious crime, as well as where the lives, health, or property of people are in real danger. A judge's approval must be acquired the next working day, but no later than 72 hours afterwards. The permission of a court is not required where the body executing the operational activities is wire-tapping the conversations of a specific individual based on a written submission by that person (Section 7 of the OAL). In the case of *Meimanis v. Latvia*, the ECtHR found that the *ex post facto* authorisation by the President of the Supreme Court, or a judge authorized for that, of the operational measures was required, notwithstanding that the interception of the telephone conversations was terminated in less than 72 hours. Having found that the *ex post facto* approval was never sought in this

case, the ECtHR did not consider it necessary to examine whether other conditions set out in the domestic law were met and it concluded that the interception of the applicant's telephone conversations was not "in accordance with the law". Consequently, there has been a violation of Article 8 (*Meimanis v. Latvia*, paras. 64-66).

4. Special Investigative Actions in the Republic of Estonia

4.1. General Conditions for Conduct of Surveillance Activities

The Criminal Procedure Code of the Republic of Estonia (hereinafter: Code) establishes the rules for pre-trial and court procedures for criminal offences, as well as the procedure for enforcing criminal judgments. This Code also lays forth the groundwork and procedures for conducting surveillance activities (Art. 1 of the Code). Permission for surveillance activities is provided by a judge who is not the head of the court and is determined by the division of tasks plan (Art. 24, para. 4 of the Code). The necessary condition is the request of the Public Prosecutor's Office (Art. 27, para. 2 of the Code).

Surveillance actions are governed by the chapter 3² of the Code. Article 126¹ lays out the ground rules for conducting surveillance activities. The phrase *surveillance activities* refers to the processing of personal data in order to fulfil a legal obligation while concealing the fact and substance of data processing from the data subject. Surveillance activities are permissible under the Code if the collecting of data or the taking of evidence by other procedural acts is impossible, unattainable on time, or particularly difficult, or if this would jeopardize the criminal proceedings' interests (Art. 126¹, paras. 1-8 of the Code).

Grounds for conducting surveillance activities are stated in Article 126² of the Code. Agencies that carry out these activities may conduct surveillance only in a case of existence of four bases. Firstly, if it is necessary to collect information regarding the preparation of a criminal offence in order to detect and prevent it. Secondly, in carrying out a court order declaring person a fugitive. Thirdly, in confiscation proceedings, when there is a requirement to gather information. Fourthly, when there is a requirement to gather information concerning a criminal offence in a criminal procedure. Surveillance activities can be carried out just for criminal offences listed in the Penal Code (Penal Code of the Republic of Estonia, 2002).

Surveillance may be carried out only with the written approval of the prosecutor's office or a preliminary investigation judge. The preliminary investigation judge will issue the grant of authorization based on the Prosecutor's Office's reasoned application. This judge must promptly consider a Prosecutor's Office's reasoned request and issue a decision granting or denying permission to conduct surveillance activities. Surveillance operations needing the authorization of a prosecutor's office may be carried out in an emergency with the Prosecutor's Office's consent granted in a manner that may be duplicated in writing. Within 24 hours as of the commencement of monitoring activities, a written consent must be obtained.

4.2. On Individual Special Evidentiary Actions

In the first place, the legislator regulates the covert surveillance of persons, things or areas, covert collection of comparative samples and conduct of initial examinations and covert examination or replacement of things. This special investigative measure can be issued for up to two months. Permission may be extended for a period of up to two months at a time. Information gathered during surveillance activities must be video captured, photographed, copied, or recorded in some other way if necessary (Article 126⁵ of the Code).

Secondly, the legislator provides a covert examination of postal items. The information gained from the inspection of a postal item is collected during a covert investigation of the item. A postal item must be sent to the addressee after subjected to a covert examination. For up to two months, which can be extended, a preliminary investigation judge authorizes the monitoring actions described in this section (Article 126⁶ of the Code).

In the third place, wire-tapping or covert observation of information is regulated. Namely, data collected by wire-tapping or covert observation of conversations or other information carried over a public electronic communications network or by any other means must be recorded. For a period of up to two months, a preliminary investigation judge authorizes the monitoring actions described in this section. The preliminary investigation judge has the authority to extend the stipulated term by up to two months after it has expired (Article 126⁷ of the Code).

Staging of a criminal offence is the commission of an act containing elements of a criminal offence with the permission of a court, subject to the conditions that the activity does not endanger people's lives or health, cause unjustified property and environmental damage, or infringe on other people's rights. A staged criminal offence should be photographed, videotaped, or audio or video recorded if at all possible. The permission is granted by the preliminary investigation judge for a period of up to two months. After expiry of the term, the preliminary investigation judge may extend it by up to two months (Article 126⁸ of the Code).

Finally, there is police agent. Under the Code, a police agent is someone who uses a false identity to gather evidence in a criminal case. The use of police agents requires formal authorisation from the prosecutor's office. Permission to deploy a police agent is granted for a period of up to six months, with the possibility to extend the period by six months at a time. Insofar as the requirements do not entail disclosure of the false identity, a police agent has all the obligations of a surveillance agency official (Article 126⁹ of the Code).

An official of the entity that performed surveillance activities or applied for surveillance operations must prepare a report on surveillance activities based on the information gathered by surveillance activities. A surveillance file must include a summary of surveillance actions as well as photographs, films, audio and video recordings, and other data recordings taken during surveillance (Article 126¹⁰ of the Code). The surveillance file shall contain every piece of information collected by surveillance activities (Article 126¹¹ of the Code).

The obligation to notify the person who has been subject to supervision is prescribed in article 126¹³, with some limitations. Article 126¹⁵ contains the provisions of supervision over surveillance activities. A prosecutor's office is responsible for ensuring that surveillance actions are carried out in accordance with the law. The *Riigikogus* committee is responsible for overseeing the actions of surveillance agencies. At least once every three months, a surveillance agency must provide a written report to the committee through the appropriate ministry.

Estonia has a Surveillance Act (hereinafter: Act), which provides the necessary conditions and procedure for surveillance activities in order to ensure the security of the state and citizens as well as to detect and prevent criminal offences and to ensure the constitutional rights of such persons. Particularly important is emphasizing the fact that surveillance activities can be performed only if the objective pursued cannot be obtained in a manner that infringes the fundamental rights of a person at the smaller percentage, which is in line with the ECtHR's standards. Surveillance agencies conduct surveillance directly and through agencies, subdivisions and persons under their administration and authorized for that purpose, as well as persons involved in secret co-operation (paragraph 6).

In *Liblik and Others v. Estonia*, the ECtHR found no violation of Article 6 (regarding the length of the procedure), but it found a violation of Article 8. In this case, the domestic courts had introduced a possibility of providing reasons retrospectively in instances where the authorising bodies had initially failed to do so. It was exactly this practice of circumventing the requirement to provide reasons at the initial authorisation stage and accepting that they could also be provided later during the proceedings which opened a door to arbitrariness contrary to the guarantees under Article 8 of the Convention. With respect to the practice of accepting retrospectively provided reasoning, the ECtHR noted that the effectiveness of the safeguard of prior scrutiny and obligation to provide reasons may not be the same where the obligation of prior scrutiny and provision of reasons is replaced with the possibility to provide such reasons later at the trial stage, where the courts inevitably have more information about how the alleged offences were committed. It is not merely the lapse of time, but the different procedural context in which such reasons would be provided, which calls for such caution (*Liblik and Others v. Estonia*, paras. 140-141).

In *Leas v. Estonia*, the applicant wanted to know if the monitoring methods were legal, and he claimed that the principle of equality of arms obliged him to have the same opportunity to choose evidence from the surveillance file as the prosecution. The ECtHR found a violation of Article 6. In this case, the applicant learnt from the prosecutor after the fact that the surveillance materials had been examined by the court. He was not informed of the grounds for non-disclosure, the nature of the unreleased materials, or whether the surveillance file contained any unreleased material evidence. The ECtHR found that the judicial authorities' procedure did not appropriately compensate for the difficulties that the defence faced as a result of its limited access to surveillance materials (*Leas v. Estonia*, para. 88).

5. Conclusion

The role of special investigative actions is of paramount importance in proving the organised crime, corruption or economic criminal offences. Although very significant, these special actions enter deeply into the sphere of guaranteed human rights. For that reason, the application of these actions must strictly be prescribed by law. It is essential that national law provides a regulatory frame for special investigative actions, and it is equally important that the framework created thereby satisfies the requirements of the ECtHR.

The Baltic countries have a special approach to regulating these measures. In addition to the codes of criminal procedure that provide a general framework for this type of acting in criminal procedure, all three countries have particular laws governing it. In Lithuania, the LOA regulates the matter of operational activities and through this legal text, among other, are regulated the principles and tasks, rights and duties of the bodies that carry out these actions, participation in said actions, the use of collected data and financing, control and scrutiny of operational activities.

Latvia has developed a very interesting system of the special investigative measures. The Latvian Law of Criminal Procedure lays out a comprehensive list of special investigative measures. Undercover activities were, for years, regulated exclusively by the Operational Activities Law, but the LCP from 1 October 2005 supplements the existing framework. The Latvian OAL establishes legal foundation, principles, tasks, objectives, and substance of operational activities, the process, forms, and types of such activities, the official status, rights, responsibilities, and responsibilities of officials of bodies performing operational activities, as well as the financing, supervision, and monitoring of such operations. The lawmaker provides a list of operational activities measures, which can be changed or expanded only by law.

The Criminal Procedure Code of the Republic of Estonia establishes the rules for pre-trial and court procedures for criminal offences, as well as the procedure for enforcing criminal judgments. This Code also lays forth the groundwork and procedures for conducting surveillance operations. Permission for surveillance activities is provided by a judge who is not the head of the court and is determined by the division of tasks plan. The Surveillance Act has an important role in this sphere.

The influence of ECtHR in development of regulation of special investigative actions is best reflected in the Lithuanian Criminal Procedure Code, which, under the influence of the ECtHR, implemented the provisions about incitement to commit a crime, which is one of the key provisions for special investigative actions. The judgment of *Ramanauskas v. Lithuania* laid the foundations for the prohibition of incitement to commit a criminal offence in the field of special evidentiary actions, and also served as the basis for a number of standards in the use of undercover investigators. Due to the restriction of human rights during the implementation of these measures, it is necessary to take into account the principle of legality, proportionality and necessity during the implementation of special investigative actions. One of the most important provisions concerns the admissibility of evidence based on police entrapment, more precisely, the obligation of state officers to act passive or prohibition of operational activities from

provoking persons into committing criminal acts. In order for the evidence obtained by these actions to be lawful, the investigative bodies must act in accordance with the established principles of passive manner. Otherwise, there will be a violation of Article 6 of the ECHR and the right to a fair trial.

References

- Aqubardia, I. 2020. Legal Grounds for Operative-Investigatory Activity and European Standards. *Journal of Law*, 1, pp. 208-218.
- Ažubalyte, R. & Fedosiuk O. 2021. Legal Principles vs. Statutory Ambiguity in Criminal Justice: Lithuanian Court Experience. *Criminal Law Forum*, 32, pp. 435-457. doi: <https://doi.org/10.1007/s10609-021-09421-5>.
- Balsamo, A. 2018. The Content of Fundamental Rights. In: Costoris, R. (ed.), *Handbook of European Criminal Procedure*. Cham: Springer, pp. 99-168. doi: https://doi.org/10.1007/978-3-319-72462-1_3.
- Banović, B., Bejatović, S., & Turanjanin, V. 2020. *Međunarodno krivično pravo*. Kragujevac: Pravni fakultet Univerziteta u Kragujevcu.
- Brady, N. 2014. Evidence, Special Investigative Techniques and the Right to a Fair Hearing. *ERA Forum*, 15, pp. 37-49. doi: <https://doi.org/10.1007/s12027-014-0334-3>.
- Bronitt, S. & Roche, D. 2000. Between Rhetoric and Reality: Sociolegal and Republican Perspectives on Entrapment. *International Journal of Evidence & Proof*, 4(2), pp. 77-106.
- Burda, E. & Trellova, L. 2019. Admissibility of an Agent Provocateur and an Advocate Acting as an Agent. *Balkan Social Science Review*, 14, pp. 55-80.
- Constantinou, A. G. 2017. Harming the Very People Whom the Law Is Seeking to Protect: The Nexus between International, European Union and Domestic Law and Human Trafficking and Undercover Police Operations. *New Journal of European Criminal Law*, 8(4), pp. 476-495. doi: <https://doi.org/10.1177/2032284417743145>.
- Čvorović, D. 2016. Implicit of Rights to a Fair Trial and Casuistry of the European Court of Human Rights. *Zbornik Instituta za kriminološka i sociološka istraživanja*, 35(3), pp. 43-53.
- Deprez, C. 2017. The Gravity of International Crimes as a Challenge to the (Full) Protection of Human Rights before International Criminal Tribunals: A Strasbourg Perspective. *Nordic Journal of International Law*, 86, pp. 499-524. doi: <https://doi.org/10.1163/15718107-08604002>.
- Easton, S. 2014. *Silence and Confessions: The Suspect as a Source of Evidence*. Palgrave Macmillan. doi: <https://doi.org/10.1057/9781137333827>.
- Floinn, M. O. 2017. The Concept of Idem in the European Courts: Extricating the Inextricable Link in European Double Jeopardy Law. *Columbia Journal of European Law*, 24, pp. 75-110.
- Glas, L. R. 2018. Translating the Convention's Fairness Standards to the European Court of Human Right: An Exploration with a Case Study on Legal Aid and the Right to a Reasoned Judgment. *European Journal of Legal Studies*, 10(2), pp. 47-82.

- Golichenko, M., Stolz, S. & Ezer, T. 2018. Addressing Human Rights Abuses against People Who Use Drugs: A Critical Role for Human Rights Treaty Bodies and Special Procedures. *Journal of Human Rights Practice*, 10, pp. 83-102. doi: <https://doi.org/10.1093/jhuman/huy011>.
- Gorlitz, F., Hubert, J., Kucher, J., Scheffer, M., & Wieser, P. 2019. Tatprovokation - The Legal Issue of Entrapment in Germany and Possible Solutions. *German Law Journal*, 20(4), pp. 496-509. doi: <https://doi.org/10.1017/glj.2019.33>.
- de Hert, P. 2005. Balancing Security and Liberty within the European Human Rights Framework. A Critical Reading of the Court's Case Law in the Light of Surveillance and Criminal Law Enforcement Strategies after 9/11. *Utrecht Law Review*, 1, pp. 68-96. doi: <https://doi.org/10.18352/ulr.4>.
- Kälin, W. & Künzli, J. 2019. *The Law of International Human Rights Protection*. Oxford: Oxford University Press.
- Keane, A. & McKeown, P. 2012. *The Modern Law of Evidence*. Oxford: Oxford University Press.
- Klimek, L. 2017. *Mutual Recognition of Judicial Decisions in European Criminal Law*. Cham: Springer. doi: <https://doi.org/10.1007/978-3-319-44377-5>.
- Levanon, L. 2016. The Law of Police Entrapment: Critical Evaluation and Policy Analysis. *Criminal Law Forum*, 27, pp. 35-73. doi: <https://doi.org/10.1007/s10609-015-9271-2>.
- Meese, J. 2017. The Use of Illegally Obtained Evidence in Criminal Cases: A Brief Overview. *ERA Forum*, 18, pp. 297-309. doi: <https://doi.org/10.1007/s12027-017-0471-6>.
- Minervini, G. 2020. The Principle of Legality and the Crime of Genocide: *Drelingas v. Lithuania*. *Human Rights Law Review*, 20, pp. 810-828. doi: <https://doi.org/10.1093/hrlr/ngaa031>.
- Moonen, T. 2010. Special Investigation Techniques, Data Processing and Privacy Protection in the Jurisprudence of the European Court of Human Rights. *Pace International Law Review Online Companion*, 1(9), pp. 97-136.
- Pajčić, M. & Valković, L. 2012. Judgments of the European Court for Human Rights against the Republic of Croatia for violation of the right to fair trial (article of the Convention for the protection of human rights and fundamental freedoms). *Hrvatski ljetopis za kazneno pravo i praksu*, 19, pp. 751-794.
- Pitcher, K. 2018. *Judicial Responses to Pre-Trial Procedural Violations in International Criminal Proceedings*. Hague: Asser Press and Springer. doi: <https://doi.org/10.1007/978-94-6265-219-4>.
- Potulski, J. 2011. Polish Model of Fighting Corruption: Success at All Costs. *US-China Law Review*, 8(6), pp. 605-616.
- Puşcaşu, V. 2010. Agenţi sub acoperire. Provocarea ilegală a infracţiunii. Consideraţii (II) [Undercover investigators; entrapment; considerations (II)]. *Caiete de Drept Penal*, 3, pp. 75-98.
- Ramos, V. C. 2016. The Rights of the Defence according to the ECtHR: An Illustration in the Light of *A. T. v. Luxembourg* and the Right to Legal Assistance. *New Journal of European Criminal Law*, 7, pp. 397-417. doi: <https://doi.org/10.1177/203228441600700403>.
- Schabas, W. 2015. *The European Convention on Human Rights: A Commentary*. Oxford: Oxford University Press.

- Skorupka, J. 2021. The Rule of Admissibility of Evidence in the Criminal Process of Continental Europe. *Revista Brasileira de Direito Processual Penal*, 7(1), pp. 93-122. doi: <https://doi.org/10.22197/rbdpp.v7i1.526>.
- Stanisavljević, J. 2021. *DNK dokazi u krivičnom postupku [DNA Evidences in Criminal Procedure]*. Faculty of Law: Kragujevac.
- Stariene, L. 2009. The Limits of the Use of Undercover Agents and the Right to a Fair Trial under Article 6(1) of the European Convention on Human Rights. *Jurisprudence*, 3(117), pp. 263–284.
- Toney, R. J. 2002. English Criminal Procedure under Article of the European Convention on Human Rights: Implications for Custodial Interrogation Practices. *Houston Journal of International Law*, 24(3), pp. 411-474.
- Torres Chedraui, A. M. 2010. An Analysis of the Exclusion of Evidence Obtained in Violation of Human Rights in Light of the Jurisprudence of the European Court of Human Rights. *Tilburg Law Review*, 15, pp. 205-234. doi: <https://doi.org/10.1163/22112596-90000013>.
- Turanjanin, V. 2022. Special Investigative Measures: Comparison of the Serbian Criminal Procedure Code with the European Court of Human Rights Standards. *International Journal of Evidence and Proof*, 26(1), pp. 34-60. doi: <https://doi.org/10.1177/13657127211055230>.
- Turanjanin, V. 2021. The Principle of Immediacy Versus the Efficiency of Criminal Proceedings: Do Changes in the Composition of the Trial Panel Violate the Right to a Fair Trial?. *Nordic Journal of Human Rights*, 39(1), pp. 73-87. doi: <https://doi.org/10.1080/18918131.2021.1923242>.
- Turanjanin, V. 2020. Video Surveillance of the Employees Between the Right to Privacy and Right to Property After López Ribalda and Others v. Spain. *University of Bologna Law Review*, 5(2), pp. 268-293.
- Viebig, P. 2016. *Illicitly Obtained Evidence at the International Criminal Court*. Cham: Asser Press and Springer. doi: <https://doi.org/10.1007/978-94-6265-093-0>.
- Wallace, D. 2009. Recent Legal Developments: Redress of Human Rights Abuses in Criminal Justice in International Human Rights Jurisprudence for 2008. *International Criminal Justice Review*, 19(4), pp. 507-523. doi: <https://doi.org/10.1177/1057567709346256>.
- Youngs, R. 2014. *English, French & German Comparative Law*. London and New York: Routledge. doi: <https://doi.org/10.4324/9781315816791>.
- Žunić, T., & Dukić, T. 2012. Defence Rights and Police Investigations in the EU. *Zbornik radova Pravnog fakulteta u Novom Sadu*, 46(2), pp. 575-596. doi: <https://doi.org/10.5937/zrpfns46-2012>.

Legal Sources

Lithuania

Republic of Lithuania, Law on Operational Activities Law No IX-965, 2002. Available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.179228?jfwid=j1u6bxs33>.

Latvia

Law of Criminal Procedure (Kriminālprocesa likums). Latvijas Vēstnesis, 74, 11.05.2005.
Adopted: 21 April 2005, entry into force: 1 October 2005. Available at: <https://likumi.lv/ta/en/en/id/107820-criminal-procedure-law>.

Operational Activities Law. Latvijas Vēstnesis, 131, 30.12.1993. Available at: <https://likumi.lv/ta/en/en/id/57573-operational-activities-law>.

Estonia

Code of Criminal Procedure. Passed 12.02.2003 (RT I 2003, 27, 166). Entry into force 01.07.2004. Available at: <https://www.riigiteataja.ee/en/eli/530102013093/consolide>.

Surveillance Act. Passed 22 February 1994 (RT I 1994, 16, 290), entered into force 18 March 1994. Available at: https://www.legislationline.org/download/id/4162/file/Estonia_Surveillance_Act_1994_am2004_en.pdf.

ECtHR case-law

Baltiņš v. Latvia. app. 25282/07 (ECtHR, January 8, 2013).

Bannikova v. Russia. app. no. 18757/06 (ECtHR, November 4, 2010).

Bykov v. Russia, app. no. 4378/02 (ECtHR, March 10, 2009).

Constantin and Stoian v. Romania. app. no. 23782/06 and 46629/06 (ECtHR, September 29, 2003).

Gorgievski v. the former Yugoslav Republic of Macedonia. app. no. 18002/02 (ECtHR, July 16, 2009).

Ibrahim and Others v. the United Kingdom, app. no. 50541/08, 50571/08, 50573/08 and 40351/09 (ECtHR, September 13, 2016).

Klass and Others v. Germany, app. no. 5029/71 (ECtHR, September 6, 1978).

Lalas v. Lithuania. app. no. 13109/04 (ECtHR, March 1, 2011).

Leas v. Estonia. app. no. 59577/08 (ECtHR, March 6, 2012).

Liblik and Others v. Estonia. app. nos. 173/15 and 5 others (ECtHR, May 28, 2019).

Malininas v. Lithuania. app. no. 10071/04 (ECtHR, July 1, 2008).

Malone v. The United Kingdom, app. no. 8691/79 (ECtHR, August 2, 1984).

Matanović v. Croatia. app. no. 2742/12 (ECtHR, April 4, 2017).

Meimanis v. Latvia, app. 70597/11, (ECtHR, July 21, 2015).

Miliniene v. Lithuania. app. no. 74355/01 (ECtHR, June 24, 2008).

Ramanauskas v. Lithuania (no. 2). app. no. 55146/14 (ECtHR, February 20, 2018).

Ramanauskas v. Lithuania. app. no. 74420/01 (ECtHR, February 5, 2008).

Tchokhanelidze v. Georgia. app. no. 31536/07 (ECtHR, June 28, 2018).

Teixeira de Castro v. Portugal. app. no. 44/1997/828/1034 (ECtHR, June 9, 1998).

Virgil Dan Vasile v. Romania. app. no. 35517/11 (ECtHR, May 15, 2018).

Dr Veljko M. Turanjanin

Vanredni profesor, Pravni fakultet Univerziteta u Kragujevcu, Kragujevac, Srbija
e-mail: vturanjanin@jura.kg.ac.rs

Jelena V. Stanisavljević, master

Advokatski pripravnik, Kragujevac, Srbija
e-mail: stanisavljevicjelena06@gmail.com

POSEBNE DOKAZNE RADNJE U BALTIČKIM ZEMLJAMA

Sažetak

U radu autori se bave posebnim dokaznim radnjama u baltičkim zemljama. Posebne dokazne radnje danas predstavljaju jednu od nezaobilaznih dokaznih mera u istragama teških krivičnih dela. Istovremeno, posebne dokazne radnje znatno više zadiru u ljudska prava u poređenju sa drugim, redovnim dokaznim radnjama. Njihova nepravilna upotreba ugrožava ljudska prava, a naročito pravo na privatnost i pravo na pravično suđenje. Rad je podeljen na tri dela. Nakon uvodnih razmatranja autori objašnjavaju litvansko zakonodavstvo, koje je u značajnoj meri uticalo na razvoj judikature Evropskog suda za ljudska prava u području prikrivenog islednika. Letonsko zakonodavstvo je obrađeno u drugom delu, a karakteriše ga veći broj posebnih dokaznih radnji. Na kraju, autori razrađuju zakonodavstvo Estonije u pogledu posebnih dokaznih radnji i daju zaključna razmatranja. Autori naročito ističu stavove Evropskog suda za ljudska prava koji su na ovom polju doneti protiv baltičkih zemalja. Širok dijapazon posebnih dokaznih radnji ukazuje na njihovu različitost, ali se može izvesti zaključak da su zakonski tekstovi pretežno u skladu sa standardima Evropskog suda za ljudska prava.

Ključne reči: posebne dokazne radnje, pravo na privatnost, pravo na pravično suđenje, zemlje Baltika, podstrekavanje.

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