

The Use of an Agent and Issues of Police Provocation

Abstract

This work focuses on the use of an agent, one of the operative searching means contained in § 158e of the Criminal Procedure Code. This tool is widely used in the investigation of the most serious crimes, such as organized crime, drug trafficking, or terrorism. If the agent acts as a so-called *undercover agent*, which is a legally approved concept, it is ideal. The information obtained by the agent controller lawfully can be used as evidence in a specific criminal case. However, the agent controller can by his actions very easily enter the role of an *agent provocateur*.

Police provocation has been described by the European Court of Human Rights and the Czech courts as an inadmissible technique. Its procedural effect in a concrete criminal case is the inapplicability of evidence obtained based on it, due to its absolute ineffectiveness. In this work, it is dealt with the concept of an agent and the related issues of police provocation as follows.

The first chapter introduces the issue of the operative searching activity, which includes **operative searching means** and **supporting operative searching means**. This is necessary to understanding the concept of an agent. Similarly, the two remaining operative searching means, which are the **pretended transfer** and **monitoring of persons and things**, are analyzed.

The second chapter provides an analysis of the current Czech legal regulation of the concept of an agent. There are examined the provisions of the Criminal Procedure Code.

The third chapter defines the concept of police provocation based on the analysis of the case law of the European Court of Human Rights and the Czech courts. Emphasis is placed primarily on the analysis of the relatively recent decision of the European Court of Human Rights: *Akbay and Others v. Germany*. Based on the definitions of police provocation provided by these courts, the characteristics of police provocation and its most significant impacts are also defined in the given chapter.

The content of the fourth chapter is a brief definition of the legal regulations of the United States of America, Canada, and the Slovak Republic, which establish the concept of an agent for whom police provocation of criminal activity is not fully excluded, or similar concept (in Canada so-called *Mr. Big* operations).

In the last chapter, the current Czech legislation is evaluated, together with the presentation of several *de lege ferenda* proposals that could represent its future amendment or supplementation.

Key words: The Use of an Agent, Undercover Agent, Police Provocation, Agent Provocateur