

JUDICIAL POLICE POWERS OF SPECIAL OPERATIONS DIRECTORATE OFFICERS

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Abstract: *The present study examines the legal framework governing the implementation of technical surveillance warrants, with a focus on the judicial police officers of the Special Operations Directorate within the Romanian Police. The paper analyzes the legislative basis under the Criminal Procedure Code and relevant special laws, as well as the constitutional and jurisprudential interpretations offered by the Constitutional Court and the High Court of Cassation and Justice. It concludes that the officers of the Special Operations Directorate who execute technical surveillance warrants possess the status of criminal investigation bodies, acting under the supervision and authority of the prosecutor. This interpretation strengthens the procedural guarantees of legality and ensures compliance with constitutional principles regarding criminal investigations.*

Key words: *Criminal investigation bodies, technical surveillance warrant, judicial police, Special Operations Directorate, Romanian Criminal Procedure Code, Constitutional Court jurisprudence.*

1. Introduction

In the contemporary context of combating organized crime and corruption, the legal framework regulating technical surveillance plays a crucial role in ensuring both efficiency and respect for fundamental rights. The Romanian legislator has established a clear hierarchy of authorities authorized to carry out acts of technical surveillance, aiming to preserve the procedural balance between the necessity of evidence collection and the protection of individual freedoms.

This paper analyzes the legal status and competencies of police officers from the Special Operations Directorate (Direcția de Operațuni Speciale – DOS), focusing on their qualification as judicial police officers empowered to execute technical surveillance warrants. It explores the interplay between legislative norms, constitutional jurisprudence, and doctrinal interpretations, emphasizing the implications of decisions of the Constitutional Court of Romania (CCR) and the High Court of Cassation and Justice (ICCJ).

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The study contributes to the ongoing debate regarding the scope of the term “specialized police workers” and their procedural legitimacy in criminal investigations involving technical means of surveillance.

2. The Legal Basis for the Execution of the Technical Surveillance Warrant

According to the provisions of Article 142 paragraphs (1) and (11) of the Criminal Procedure Code, the execution of a technical surveillance warrant is carried out by the prosecutor, who may order that this activity be performed by the criminal investigation bodies or by specialized police officers.

With regard to the recording of technical surveillance activities, as indicated under Article 138 paragraph (1) letters (a)–(d) of the Criminal Procedure Code, the prosecutor or the criminal investigation body shall draw up a written report for each technical surveillance activity. This report shall record the results of the activities carried out which concern the act under investigation or contribute to the identification or location of persons, the identification data of the medium containing the results of the surveillance, the names of the persons referred to—if known—or other identification data, as well as, where applicable, the date and time when the surveillance activity began and the date and time when it ended.

The legislator expressly includes specialized police officers among those authorized to execute technical surveillance warrants. The provision allowing prosecutors to delegate the execution of such warrants to these officers constitutes a derogation from the general procedural rules governing delegation, which permit it only toward hierarchically subordinate authorities. As specialized police officers are not hierarchically subordinate to prosecutors and do not hold the status of criminal investigation bodies, their involvement in executing surveillance warrants is limited to technical operations. The preparation of official reports or transcripts documenting surveillance activities—acts that constitute elements of criminal investigation—remains the exclusive competence of judicial authorities.

Although this requirement is not explicitly stated by the legislator, it follows that specialized police officers may be delegated to execute technical surveillance warrants only if they meet the legal conditions necessary to obtain authorization as judicial police officers.

3. Status of Judicial Police Criminal Investigation Bodies within the Special Operations Directorate

Under Law No. 218/2002, republished, the Romanian Police includes, among other organizational units, the General Inspectorate of the Romanian Police, within which the Special Operations Directorate operates, staffed with judicial police officers and agents.

The judicial police are composed of officers and agents who have acquired the status of police officer under the conditions set forth in Law No. 360/2002 on the Police Officer Statute. They are appointed by administrative act by the competent authority, following the issuance of the designation approval in the judicial police as provided in Article 55(4)

of Law No. 135/2010 on the Code of Criminal Procedure, with subsequent amendments, or are designated and operate according to special legislation, as provided by Article 2 of Law No. 364 of 15 September 2004 on the Organization and Functioning of the Judicial Police. Article 2 further establishes that officers and agents referred to in paragraph (1) are recognized as criminal investigation bodies of the judicial police.

Concerning the strictly judicial nature of the activities of police officers who have obtained the designation approval under Article 55(4) of Law No. 135/2010, Article 8 of the same law provides that criminal investigation bodies of the judicial police carry out their functions under the direction, supervision, and control of the prosecutor and are obliged to implement the prosecutor's instructions.

Consequently, the law does not distinguish between the criminal investigation bodies of the judicial police and other specialized police personnel regarding their powers and duties.

The relationship between the broader category of "police officer" and the specific designation of "criminal investigation body of the judicial police" is determined solely by the acquisition of the designation approval under Article 55(4) of Law No. 135/2010. Any police officer who obtains this approval automatically assumes the status of a criminal investigation body, regardless of whether they also serve as a specialized police officer.

With respect to the inclusion of specialized police personnel within the criminal investigation bodies of the judicial police, the jurisprudence of the Constitutional Court of Romania (CCR), referenced in Section III, provides clarification.

Doctrine notes that judicial police officers within the Romanian Police, the General Anticorruption Directorate, or the Border Police may execute technical surveillance warrants. The law does not require that the body executing the surveillance be part of the same organizational structure as the one investigating the case; this is facilitated by delegation from the prosecutor. In contrast, personnel of the D.G.P.I. cannot acquire the status of a judicial police body, as they are not authorized to carry out criminal investigation acts. [M. Bulancea, R. Slăvoiu, in M. Udriu (coord.), *Code of Criminal Procedure. Commentary by Articles*, C.H. Beck Publishing, 2017, 2nd ed., p. 691; M. Udriu, *Criminal Procedure. General Part*, vol. I, 6th ed., C.H. Beck Publishing, Bucureşti, 2019, p. 587]

4. Jurisprudence of the Constitutional Court of Romania relevant to the Legal Issue

The Constitutional Court held that the activity of enforcing the technical surveillance warrant provided for in Article 142 (1) of the Criminal Procedure Code is carried out through procedural acts. In other words, Article 142 (1) of the Criminal Procedure Code does not concern technical activities, these being regulated under Article 142 (2) of the same Code, which refers to the persons obliged to cooperate with the criminal investigation bodies for the enforcement of the technical surveillance warrant, namely providers of public electronic communications networks or providers of publicly available electronic communications services, or of any type of communication or financial services. (Constitutional Court Decision no. 55 of 16 February 2022, paragraph 186).

The Court found that precisely identifying the authorities empowered to carry out the enforcement of special technical surveillance methods is an essential element, emphasizing the need for these authorities to fall within the scope of judicial bodies—namely the prosecutor, the criminal investigation bodies, and the specialized police officers—provided that the latter hold authorization as judicial police officers, and not other persons/entities whose duties fall outside the field of crime prevention, detection, and prosecution. (Constitutional Court Decision no. 55 of 16 February 2022, paragraph 146)

The Court concluded that the acts performed by the bodies referred to in Article 142 (1), second sentence, of the Criminal Procedure Code constitute evidentiary procedures forming the basis of the report recording the technical surveillance activity, which itself constitutes a means of evidence. For these reasons, only the criminal investigation bodies may participate in carrying out such acts. These bodies are those enumerated in Article 55 (1) of the Criminal Procedure Code, namely the prosecutor, the criminal investigation bodies of the judicial police, and the special criminal investigation bodies. (Constitutional Court Decision no. 51 of 16 February 2016, paragraphs 33–34)

The Court also found that no provision in the current national legislation—except for Article 142 (1) of the Criminal Procedure Code—contains any rule expressly granting competence to any other state authority, apart from the criminal investigation bodies, to conduct interceptions or to enforce a technical surveillance warrant. (Paragraph 47 of the above-mentioned decision)

In another decision, the Court held that the phrase “other specialized state bodies” in Article 142 (1) of the new Criminal Procedure Code does not refer to persons providing technical assistance in carrying out surveillance measures. In Decision no. 51 of 16 February 2016, the Court grounded its reasoning on the persons executing the technical surveillance warrant, not on those providing technical support for the surveillance activity. The Court noted that, under the old Criminal Procedure Code—as well as under the new one—technical support for surveillance was provided by persons without criminal investigation powers, within the limits of their competences. For this reason, Article 91² paragraph 1, second sentence, of the 1968 Criminal Procedure Code imposed on those providing technical assistance for interceptions and recordings the obligation to maintain secrecy regarding the operation performed—an obligation whose breach was criminally punishable. The same principle is preserved in Article 142 (3) of the new Criminal Procedure Code. [Constitutional Court Decision no. 734/2017, paragraphs 17–18 (Official Gazette no. 352 of 23 April 2018)]

Complementing this, the High Court of Cassation and Justice held that the provision of the necessary infrastructure by the National Centre for the Interception of Communications within the Romanian Intelligence Service, in the sense of ensuring the technical conditions for implementing technical surveillance measures, does not constitute an activity of enforcing the technical surveillance warrant, within the meaning of Article 142 of the Criminal Procedure Code. [High Court of Cassation and Justice, Panel for the Clarification of Legal Issues in Criminal Matters, Decision no. 64/2023 (Official Gazette no. 1047 of 20 November 2023), www.scj.ro]

Regarding the meaning of the phrase “specialized officers within the police,” the Constitutional Court ruled that it complies with the constitutional requirements of

clarity and foreseeability of legal norms, rejecting—through a recent decision—the exception of unconstitutionality raised in this regard. The author of the exception argued that the phrase “specialized officers within the police” in the challenged provision lacked clarity and predictability, as the text does not specify who these specialized officers are, which structure they belong to, or whether they must hold judicial police authorization under Article 55 of the Criminal Procedure Code. Furthermore, the text does not indicate the field in which these officers must be specialized. (...) The bodies that may participate in these activities are only the criminal investigation bodies, namely those listed in Article 55 (1) of the Criminal Procedure Code—the prosecutor, the criminal investigation bodies of the judicial police, and the special criminal investigation bodies. (...) The Court held that, under Article 55 (1)(b) and (4) of the Criminal Procedure Code, the criminal investigation bodies of the judicial police are criminal investigation authorities, whose duties are fulfilled by specialized officers within the Ministry of Internal Affairs, specifically designated under special legislation and holding the proper authorization from the Prosecutor General of the Prosecutor’s Office attached to the High Court of Cassation and Justice or from a designated prosecutor. Moreover, under Article 55 (6) of the same Code, the criminal investigation bodies of the judicial police and the special criminal investigation bodies carry out their activities under the direction and supervision of the prosecutor. In this context, the Court observed that the legislator adopted Law no. 364/2004 on the organization and functioning of the judicial police (republished in the Official Gazette of Romania, Part I, no. 305 of 24 April 2014), which regulates, as its title suggests, the organization and functioning of the judicial police, as well as the procedure for designation within it. Additionally, Law no. 360/2002 on the Status of Police Officers (published in the Official Gazette of Romania, Part I, no. 440 of 24 June 2002) regulates the status of police officers. (...) The Court therefore dismissed, as unfounded, the exception of unconstitutionality and found that the provisions of Article 142 (1), final sentence, of the Criminal Procedure Code are constitutional in relation to the criticisms made. [Constitutional Court Decision no. 591/2023, paragraphs 3, 16, 22 (Official Gazette no. 287 of 3 April 2024); see also Constitutional Court Decision no. 439/2022 (Official Gazette no. 1230 of 21 December 2022)] (Decision no. 591 of 31 October 2023 regarding the exception of unconstitutionality of the provisions of Article 142 (1), final sentence, of the Criminal Procedure Code)

5. Jurisprudence of National Courts

The acts of executing technical surveillance warrants constitute evidentiary procedures that form the basis of the report recording technical surveillance activities, which itself is a means of proof. Consequently, in accordance with Constitutional Court Decision No. 51/2016, the bodies authorized to carry out these acts are exclusively criminal investigation bodies. In light of Article 285 of the Code of Criminal Procedure—which provides that criminal investigation aims to gather the necessary evidence regarding the existence of offenses, the identification of persons who committed an offense, and the determination of their criminal liability, in order to decide whether

prosecution is warranted—the acts of executing technical surveillance warrants constitute acts of criminal investigation. [High Court of Cassation and Justice, Criminal Section, Ruling of 21 March 2018, www.scj.ro]

6. Conclusions and Proposals

Police officers serving within the Special Operations Directorate, in the performance of duties related to the execution of technical surveillance warrants, are vested with the legal status of criminal investigation authorities. Pursuant to Article 324(3) of the Code of Criminal Procedure, they may be delegated to perform and duly record technical surveillance activities, in accordance with the procedural framework established under Article 143(1) of the same Code.

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