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Ensuring security of pre-litigation proceedings bodies – forensic aspects

S u m m a r y

The report proves the importance of carried out forensic operations which ensure the security of pre-trial authorities and lead to a more complete implementation of basic principles of criminal proceedings – making decisions upon inner conviction and revealing the objective truth.

Key words: forensic theory to counteract the investigation, administrative measures to ensure the security of pre-litigation proceedings bodies, forensic operations to ensure the security of pre-litigation proceedings bodies

Everyone who lives in a civilized society is entitled to have rights (respectively, responsibility to respect the rights of others) in order to exist in a normal and dignified manner. These rights have crystallized for centuries and found their expression in the Universal Declaration of Human Rights adopted by the United Nations General Assembly¹. Each of these rights corresponds to an important human need.

1. One of the human needs of particular importance is ensuring life, liberty and personal security². In this sense, Art. 3 of the Universal Declaration of Human Rights states that „everyone has the right to life, liberty and personal security.“ Such rights are also regulated by the Convention for the Protection of Human Rights and Fundamental Freedoms, applicable to the member states of the EU (Art. 5 – Right to liberty and security)³. Similarly, these rights are also defined in the EU Charter of the Fundamental Rights⁴. The Constitution of the Republic of Bulgaria states that „Everyone has the right to liberty and inviolability” (Art. 30, para. 1).

Thus defined human rights concerned need effective legal and other guarantees for their observation. The main guarantor is the state and its bodies, which with their activities must ensure full safety of every citizen in its territory. On the other hand, the guarantees consist in making every effort to quickly find, capture and organize prosecution against all individuals or groups who have violated these fundamental rights⁵.

Ensuring the person's right to security is part of the wider security and risk issue⁶. According to P. Hristov, „The need for human security . belongs to the basic motivational mechanisms of human existence“⁷.

In view of the issue under consideration, we will go into one of the aspects of the right to security – the right to personal safety. This right is usually linked to the state's protection from criminal offenses and other similar acts against the

¹ The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on December 10, 1948.

² In scientific literature A. Maslow's view of the hierarchy of human values is known as the so-called "Maslow's Pyramid" (1954). After satisfying physiological needs as a human necessity, A. Maslow put the need for security for the individual (shelter, safety, security).

³ The Convention was adopted in Rome, Italy, on 4 November 1950; in our country it is promulgated in State Gazette, No. 80 of 02.10.1992.

⁴ The EU Charter of Fundamental Rights – 2012 / C 326/02, was adopted in 2000, for the Republic of Bulgaria is mandatory since 2009.

⁵ In this sense, the text of Art. 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms - Right to an effective legal remedy: “Everyone whose rights and freedoms are violated has the right to an effective remedy before the relevant national authorities ...”

⁶ P. Hristov. Risk Metathesis. "Albatros", S., 2010; D. Yonchev. Seeking Security (Security in the Concept of Presence). East-West, S., 2014; D. Yonchev. Levels of security. NBU, S., 2008; K. Kanev. The right to personal freedom and security. "Sibi", 2016.

⁷ P. Hristov. Risk Metathesis, p. 172.

person. The right to safety is seen as a state of protection of vital interests, including the right to pinviolability.

2. Like all other citizens, the right to personal safety is also exercised by persons acting in pre-litigation bodies (prosecutors and investigative bodies – investigators, investigating police officers, investigating customs inspectors). Undoubtedly, due to the important function that these bodies perform – namely the function of investigation in the criminal process – there is an increase in the possibilities of committing unlawful attacks against their personal safety. The increasing victimity of prosecutors and investigators is reported globally⁸.

In fact, these illegal attacks are aimed at creating preconditions those bodies not to be able to carry out their assigned function or their motivation to commit unlawful actions (or inactions) – attacks against their professional safety.

3. Undoubtedly pre-litigation proceedings bodies should be provided with personal and professional security to perform normally and legally their duties. How does the state guarantee their security? Our study has shown that measures are being taken in several ways.

3.1. Criminal legal protection of pre-litigation proceedings bodies.

In the Penal Code of the Republic of Bulgaria in the Special section there are rules that create enhanced protection of pre-litigation proceedings bodies in criminal offenses against them aimed at non-performance of their assigned functions. In this respect, the following texts⁹ may be cited: murder of a prosecutor, investigator, investigative policeman upon or in connection with the performance of his/her duties or functions – Art. 116, para. 2; causing bodily harm to a prosecutor, investigator, investigative policeman upon or in connection with the execution of his duties or functions - Art. 131, para. 2; the use of force or threats against a body in order to compel them to commit or omit anything in office or in connection with his function – Art. 269, para. 1; unlawful obstruction of a body to perform their obligations – Art. 270, para. 1; soliciting an official from the investigating bodies or from the prosecution or judicial bodies to breach an official duty in connection with the administration of justice – Art. 289; offering, promising or giving a gift or any benefit to an official in order to perform or not to perform an official duty – Art. 304, para. 1; mediation for committing such an act – Art. 305a.

3.2. Establishment of specialized units to ensure the security of pre-litigation proceedings bodies.

In the Judicial System Act – Art. 391, para. 3, item 3, the General Directorate of Security at the Ministry of Justice is assigned to organize and provide security

⁸ B. Stankov. *Criminology. Theoretical foundations*. V., 2008, p. 266–267.

⁹ See in detail: A. Girginov. *Criminal law of the Republic of Bulgaria - a special part*. "Sophie-R, S., 2005, p. 369–375; 402–403; 415–421.

for prosecutors and investigators under the terms and conditions laid down in an ordinance¹⁰.

4. We make a statement that forensic science should also contribute to ensuring the security of pre-litigation proceedings bodies. In support of this, the following reasons can be highlighted.

Plotting or taking of unlawful actions against pre-litigation bodies in a large number of cases is aimed at preventing pre-litigation proceedings in the presence of a legitimate reason and sufficient data, frustrating criminal proceedings already initiated, not taking certain procedural steps Or actions to investigate or commit them in an unlawful manner, re-qualification of criminal liability to a lighter formation, separation of criminal proceedings, etc. Such an impact must not cause a change in the general plan of the investigation in the manner in which these actions are carried out. Making recommendations in this direction is one of the tasks of forensic tactics as a section of forensic science. On the other hand, special investigative actions, procedural actions, operative and search measures and organizational actions directed directly at neutralizing the security threat to the pre-trial authorities should be planned.

In recent years, the fundamentals of private forensic theory have been extensively developed to overcome counter-crime investigations¹¹. It is precisely in the framework of this private forensic theory that the issues of ensuring the protection of pre-litigation bodies in the performance of their functions should be developed.

5. The counteraction to the investigation can be defined as intentional activity of interested persons (including accused persons) in order to influence the course of pre-trial proceedings and ultimately to prevent the objective truth from being established. This creates obstacles to the lawful performance of the functions assigned to the pre-trial authorities and the execution of their powers.

R. Belkin classifies the counteraction of the investigation in two types: internal and external. Internal counteraction involves covering up the traces of a crime committed, its participants and its consequences. External counteraction is an activity aimed at preventing pre-trial proceedings by various individuals. It is clear that threatening the security of the pre-trial bodies is an element of the structure of the external counteraction.

¹⁰ Ordinance No. 1 (21.04.2011) of the Minister of Justice on the Terms and Procedure for Organization and Implementation of Security of Judges, Prosecutors and Investigators.

¹¹ One of the first forensic scientists to develop the foundations of the theory are: V. Karagodin. Overcoming counteraction to preliminary investigation. Sverdlovsk, 1992; R. Belkin. Counteraction to the investigation and ways to overcome it by forensic and operational-search means and methods. // Forensic support of the criminal police and the bodies of preliminary investigation. M., 1997; The same author – Criminalistics, M. „Norma”, 2001, Ch. 43; Tryapva and whitewash, and working and working on the interdisciplinary "Theory of safety for punishment processes" - see: A. Galuzin. On the fundamentals of the theory of the security of the criminal process // Black holes in Russian legislation. 2004, No. 1, p. 278.

5.1. External counteraction can be manifested in a variety of forms. Here we will try to present an exemplary classification of the basic forms:

- assault on life, bodily harm, kidnapping members of pre-trial bodies
- addressing direct threats to life and health of pre-trial authorities as well as to their relatives;
- direct threats for destruction or damage of property, motor vehicles and other property belonging to pre-trial authorities or their relatives;
- threats related to office and career growth opportunities for pre-trial authorities;
- threats to disclose compromising data on the pre-trial authority.

As a particular form of influence can be mentioned the offering of a bribe in a different form to the body of pre-trial proceedings.

5.2. These various unlawful forms of influence may be applied by different persons interested in the outcome of the relevant criminal proceedings. In this respect, several groups of people can be distinguished: accused in cases that are in the pre-trial proceedings; indirectly through other actors in the criminal proceedings – witnesses, experts, defenders, etc; persons familiar with the body of the pre-trial proceedings, incl. former colleagues; indirectly through senior heads of pre-trial bodies.

In the latter case, the forms of impact may have a procedural, administrative, organizational or everyday life nature. They can be expressed as follows: giving instructions related to the investigation case, the execution of which requires a large amount of time or are practically unenforceable; unjustified seizing of the case and handing it over to another investigative body; unjustified denial to the investigating authority's requests related to the criminal proceedings (eg. refusal to request the court to take "Detention in custody" for the accused person; refusal to extend the investigation period, etc.); secondment of the investigating authority for a long time without justification; transferring the investigating authority to work elsewhere; unjustified indictment of the investigating authority in violation of the law in the course of the investigation; providing counseling to the persons opposing the investigation; no measures are taken to protect the investigative body when there are indications of planning or exerting pressure on it; different forms of psychological pressure, including problems in everyday life etc.

The bodies of pre-trial proceedings can be influenced directly by certain persons, through anonymous messages or through the mass media.

6. Regardless of how the impact is taking place, it is necessary to apply a certain algorithm of various actions to neutralize this impact, which creates an adverse investigative situation/conditions at the relevant stage of the investigation. Forensic science has developed recommendations to overcome the adverse investigati-

ve situations, some of which are related to the development of forensic (tactical) operations (combinations). Their use can be justified by the following arguments:

- forensic operations are a complex/system of various actions: investigative actions, operative-search actions, organizational measures, and the nature of the unfavorable investigation situation requires the application of such a system of actions and measures in a certain sequence;
- the neutralization of unlawful impacts on the pre-trial authorities requires that an interaction with the investigative bodies and other authorities be organized in the course of the investigation - the structure of the forensic operation is included as an element of the realization of such interaction.

The working name of this type of forensic operation may be: “Neutralizing the unlawful impact on the bodies of pre-trial proceedings”¹².

6.1. Tasks of the forensic operation „Neutralization of anticorruption impact on the bodies of pre-trial proceedings“:

- preventing preparatory actions for unlawful impact on pre-trial authorities (when information on the preparation of such actions is provided);
- suspension of actions threatening the security of the pre-trial authorities (when such actions have already begun);
- collecting evidence of wrongdoing and bringing the culprits to criminal liability (when crimes have been committed, as a result of these actions).

6.2. Planning of the forensic operation “Neutralizing the unlawful impact on the bodies of pre-trial proceedings”.

6.2.1. Planning should start with an assessment of received data on a prepared or already carried out unlawful impact on pre-trial authorities. If data about the unlawful impact were immediately received by the pre-trial authority, he should immediately notify his immediate supervisor and not attempt to counteract independently.

When dealing with this problem, forensic science should use the elaborations of the science of risk. First of all, it is necessary to reveal the risk, which means “determining probable hazards in the process of implementing a specific solution”¹³.

6.2.2. Planning investigative actions

- interrogation of the accused person

¹² And then assessing the level of the threat to pre-trial authorities and assessing the risk of taking other actions against the threat. As far as protection of magistrates is concerned (including prosecutors and investigators), a Methodology for assessing the threat has been developed, Appendix 1 to Ordinance No. 1.

¹³ And then assessing the level of the threat to pre-trial authorities and assessing the risk of taking other actions against the threat. As far as protection of magistrates is concerned (including prosecutors and investigators), a Methodology for assessing the threat has been developed, Appendix 1 to Ordinance No. 1.

During the interrogation, the real reason that the accused person thinks or takes unlawful action should be clarified; The seriousness of his intentions; The persons who help him / her achieve the impact; Persuading the person to abandon these intentions or to stop the action.

- search and seizure

Search and seizure can be carried out in the home of the accused person, as well as in the residence of other persons involved in the realization of the offense. Objects of search can be: items (weapons, etc.) the offense is being effected with; documents that are relevant to the threat; computers, information data, magnetic data carriers, telephone sets, navigation apparatuses, etc. where data can be found about the implemented or already started offensive impact.

- interrogation of witnesses

As witnesses, close and familiar to the accused person may be interviewed, who can provide information on how the offense is organized; persons with whom the accused person has been in custody (if he has previously served a custodial sentence) and to whom he may have shared his or her plans for the planned unlawful impact. Interrogation of an undercover officer, if any, could also be carried out in the organized crime group that has the unlawful effect.

- appointment of experts

If the threat is implemented in writing, they can be appointed:

- handwriting expertise and technical examination of documents – to establish the writer of the letter by his handwriting; technical tool (computer, printer) used for the writing of the text; dactyloscopic expertise (if dactyloscopic traces were found on the letter);
- authoring expertise – to identify the author of the document.

If the threat is made by phone and voice recordings are made, phonoscopy can be assigned.

- use of special intelligence means (if the conditions set out in Article 172 (2) of the CCP Code of Criminal Procedure are in place.)¹³.

In order to avoid a direct unlawful impact on pre-trial authorities, some of the investigative actions to prove criminal activity could be carried out by delegation (based on Article 108 of the CCP Code of Criminal Procedure).

6.2.3. Planning operative-search actions

Simultaneously with the conduct of investigative actions it is necessary to plan and carry out operative-search actions with the main purpose of establishing the author of a threat to the pre-trial authorities when this threat is anonymous. Operational means and methods can be used to identify the intended future actions of the persons who have decided to implement the unlawful impact, the type and character of the actions, the time and the place of their execution, etc.

6.2.4. Organizational measures

6.2.4.1. One group of the organizational measures to be planned and implemented is related to the interaction between pre-trial authorities and other bodies.

In cases where the unlawful impact is directed against prosecutors or investigators, an interaction should be organized between the threatened persons and the authorities of DG Security. According to the provisions of Ordinance No. 1, the administrative head of the investigator or prosecutor should be notified about the threat. He draws up a motivated proposal to the Minister of Justice through the Chief Director of DG “Security”; On the basis of the proposal, the Minister of Justice issues a special order to secure the threatened prosecutor or investigator. The prosecutor or investigator must complete a statement of assistance¹⁴. In execution of the order, DG Security organizes personal physical security (round-the-clock, for certain hours or for certain cases) and / or guarding the home of the threatened (physical and / or technical).

On the other hand, it is necessary to establish an interaction between the authorities of the DG „Security“ and the relevant authorities of the Ministry of Interior. To ensure this interaction, regulatory prerequisites are provided.

6.2.4.2. Other organizational measures

- setting up an investigative team of several investigators to carry out different investigative tasks, to undertake individual investigative actions (depersonalization strategy) - in order to make it more difficult to target an unlawful impact on a particular member of the team;
- creating possibility for rotation of members of the investigative teams, including readiness for immediate replacement of a member of the team for whom information has been received that may be or has already been the subject of unlawful action¹⁵. The threatened body of pre-trial proceeding may be seconded or his place of work changed;
- measures to keep the information about the place of residence and private life of pre-trial authorities and to prevent information leak;
- measures to preserve investigative secrecy in the course of the investigation, and in particular to preserve the secrecy of the action taken against the unlawful impact on pre-trial authorities, including planned and executed forensic operations...

The following conclusion can be drawn. By developing and carrying out forensic operations in order to ensure the security of pre-trial authorities there will

¹⁴ This statement is necessary insofar as it may result in some limitation of the rights of the person in danger. In some countries (the Netherlands, Italy), prior consultation with the threatened person is practiced.

¹⁵ E. Ugo Savona. Protect the criminal justice system from threats and violence. Report of Seminar on Problems of Victimization in a Transitional Society. Tsigov Chark, 26–27.04.1995. Information Bulletin of NIKK-MI, 1995, № 89, p. 9–13.

be achieved a more complete implementation of basic principles of criminal proceedings – making decisions upon inner conviction and revealing the objective truth.

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