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THE PROBLEMS OF EVALUATING DATA OBTAINED BY THE SECRET PROCEDURAL INVESTIGATION ACTIONS

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Abstract. Public concerns in the media and the government's attention to insufficient control of institutions that use secret procedural investigative actions, constantly developing judicial practice, in which new problematic issues in this area are raised and analyzed, the number of cases against Lithuania in international courts, presupposes not only the application of secret procedural investigation actions, but also the relevance of the assessment of the data obtained during them in the evidentiary process. As a result, the object of this research is the evaluation of data obtained during the application of secret procedural investigation actions in the evidentiary process, and the article aims to analyze the peculiarities and problematics of the evaluation of data obtained in this way in the evidentiary process in the practice of Lithuanian courts. The article uses basic research methods such as document analysis, systematic analysis, comparative analysis, deduction and generalization methods. The performed analysis substantiated the resulting complex situation in which the courts find themselves, evaluating the data obtained in this way in the evidentiary process in terms of the admissibility of evidence or the proportionality of the limitation of private life due to the problems that are not properly and clearly resolved in these areas in the practice formed by the court of cassation. And a more detailed analysis of the evaluation of the data obtained during the application of specific secret procedural investigative actions led to an even more complicated situation due to the formulated very specific rules for the evaluation of the data obtained in this way.

Keywords: covert investigative actions; evidence; case law; evidentiary process

INTRODUCTION

In addition to public data collection methods, Criminal Procedure Code of the Republic of Lithuania also regulates secret data collection methods provided for in Articles 154, 158, 159 and 160 of this law, which are considered coercive actions restricting the basic constitutional rights of a person. At the same time, this raises considerable public concern about the possible unjustified and illegal tracking of people, eavesdropping on their conversations, and the like, which is confirmed by the already publicly expressed concerns in the media about the insufficient control of institutions that carry out such secret actions ("Kauno diena", 2021). Moreover, by the resolution of the Seimas of the Republic of Lithuania No. 7293, in the years 2015-2025, the aim is to strengthen criminal intelligence in Lithuania, increasing the effectiveness of criminal intelligence and criminal prosecution. These circumstances presuppose the relevance of the application of secret procedural investigative actions, because as the criminal intelligence apparatus expands, the application of such procedural investigative actions without sufficient reasonableness control, increases in parallel the problematic aspects of admitting such data as evidence in a criminal case. In addition, in the practice formed by the court of cassation, more and more problematic issues are raised and analyzed, related to data obtained legally, reasonably, proportionately by secret investigative actions, which makes it necessary to constantly monitor and properly assess the situation, solving problems related to the evaluation of data obtained in this way. Especially since in the cases examined at the European Court of Human Rights, such as case No. 13109/04 or No. 74420/01 and others, which raise questions about the violation of the principles of competition and equality, as well as about inciting a person to commit a criminal act in the Lithuanian criminal process, which leads to the need to more carefully assess the legal and factual bases of secret procedural investigative actions at the national level. The relevance of this topic is determined by its insufficient level of research in legal doctrine and the objective need for additional analysis, i.e. although this topic has been analyzed by scientists such as R. Ažubalytė, R. Jurkas or D. Murauskienė, their research is narrow and focused on certain problem areas that are encountered when applying secret procedural research actions, so there remains a need to conduct research in a more orienting manner to the content of the evaluation of the data obtained during secret procedural investigation actions in the evidential sense, the problems arising in legal practice when evaluating the data obtained by such actions. And the identification of the causes of arising practical problems could contribute to the improvement and optimization of the regulation and application of secret procedural investigative actions.

The object of the research – evaluation of data obtained during the application of secret procedural investigation actions in the evidentiary process in Lithuanian case law.

The aim of the research – to analyze the peculiarities and problematics of the evaluation of data obtained during the application of secret procedural investigation actions and problems in the case law of Lithuanian courts.

The tasks of the research: 1) to reveal the problem of evaluation of data obtained during the application of secret procedural investigation actions in terms of the requirement of admissibility of evidence; 2) to examine the problem of evaluating the data obtained in this way in terms of the proportionality of the limitation of private life; 3) to analyze the issues of evaluation of data obtained during specific secret procedural investigation actions in judicial practice.

Methodology of the research: depending on the topic, goals and objectives of the research, the following research methods are used: the document analysis method was used to detail the analyzed issues in legal regulation and judicial practice; systematic analysis and comparative methods were used to compare legal provisions and case law; the deduction method made it possible to define specific problems arising in practice from the general requirements, while the generalization method systematized the entire analysis and provided structured conclusions.

Abbreviations: the CPC – the Criminal Procedure Code of the Republic of Lithuania; the SCL – the Supreme Court of Lithuania; the AICA – actions imitating a criminal act.

THE PROBLEM OF ASSESSMENT OF DATA OBTAINED BY SECRET PROCEDURE INVESTIGATION ACTIONS IN THE EVIDENTIARY PROCESS: THE REQUIREMENT OF ADMISSIBILITY

The data obtained during the application of secret procedural investigative actions shall be evaluated in accordance with the procedure established in Article 20 of the CPC. Meanwhile, the criterion of admissibility of evidence presupposes the need to carefully follow the letter of the law establishing the procedure for data collection when collecting data, since the requirement of admissibility of evidence prohibits seeking to establish the truth in the process at any cost (Juozapavičius, 2010). The requirement of admissibility is perhaps most often discussed in case law, especially in the case of a particular issue, and in the practice of the court of cassation, problematic situations are encountered, when the data obtained during the application of secret procedural investigative actions are used for the investigation of another criminal act, for which a specific action was not sanctioned. One such case was analyzed in case No. 2K-129-976/2019, in which the court of cassation decided on a possible violation of the requirement of admissibility, when data obtained by a legally sanctioned secret procedural investigative action in one pre-trial investigation are used in another investigation for which the possibility of performing such an action is not provided for by law. The Court of Cassation clearly noted that the mere fact that specific data was obtained in a legal manner, without violating the procedure for obtaining and sanctioning such data, is not an indicator for assessing the permissibility in the context of their use, therefore the use of legally obtained data in a pre-trial investigation, where the relevant investigative action was not sanctioned and not provided for by law, is to be considered inappropriate. Meanwhile, in another case No. 2K-7-85-696/2016, in a certain sense, the opposite situation arose, in which it was established that the data was obtained and used illegally, since the secret procedural investigation action was unreasonably sanctioned by the court, making an abstract decision on the sanctioned content of such an action, and the information collected by such action was admitted as evidence. As can be seen, case law requires special attention to be paid to the fulfilment of formal requirements for this type of evidence. It is conceivable that in the norms of the CPC, intended to regulate the use of secret procedural investigation actions, if more specific requirements for the prosecutor's presentation and the content of the court ruling (sanction) are established, such violations of the principle of admissibility would be avoided.

Another frequent case of violation of the principle of admissibility is provocation, which is an absolutely impermissible tool in criminal proceedings during any kind of procedural actions, because the state cannot “create crimes and then punish for it” as noted by the court of cassation in case No. 2K-375-895/2015. Both national and international legal acts enshrine an imperative prohibition on provoking a person to commit criminal acts during secret procedural investigative actions, i.e. a person acting in accordance with the CPC cannot encourage, persuade or otherwise incite a person to commit a specific criminal act (the ruling of the court of cassation in case No. 2K-65-976/2017). It should be noted that the concept of provocation in the CPC is not disclosed, only the provisions prohibiting provocation are mentioned, and its concept is presented only in point 4 of Article 5 of the Law on Criminal Intelligence of the Republic of Lithuania, where it is defined as “pressure, active encouragement or incitement to commit a criminal act by restricting a person's freedom of choice of actions, if as a result the person commits or attempts to commit a criminal act, which before didn't

intend to do". Generally speaking, provocation is associated with the unauthorized influence of officers on a person, which leads to a person's decision to commit a crime. However, it is necessary to pay attention to the fact that provocation is manifested not only in active actions, but in accordance with the practice formed by the court of cassation in case No. 2K-65-976/2017 - in passive actions, i.e. secret procedural actions carried out by officials over a long period of time can eventually resemble provocation and "acquire" a passive form of provocation. However, in legal practice, passive provocation causes a lot of difficulties, which is associated with officers applying secret procedural investigative actions, "permitting" individuals to commit criminal acts, without preventing them in time, thus usually with the aim of prosecuting a person for a more serious criminal act. It is noticeable in the legal doctrine that the behaviour of officials in the context of provocation must be evaluated according to two criteria: "behaviour of law enforcement authorities, which awakens a person's motivation to act criminally, as if there is data available about a person's criminal propensity" and second – "this is creating an extremely attractive opportunity for a person whose criminal propensity is known to act illegally" (Jurka, 2013). Although the active form of provocation is mainly examined and explained in the judicial practice, the manifestations of the passive provocation are also found in the latest judicial practice. One of them - criminal case No. 2K-1-719/2020, in which the SCL assessed the reproduction of criminal acts as a form of passive provocation, however, in that situation, they did not identify a case of such provocation, because data on criminal acts committed by guilty persons was obtained even before the performance of specific secret procedural investigative actions, and the activity and interest in committing criminal acts came from the perpetrator himself.

In addition, in the SCL practice, as in case No. 2K-302/2013, broader interpretations can be found, which are aimed at defining essential criteria that will help identify possible provocation during secret procedural investigative actions: 1) such actions can only be carried out against a person, about whose criminal act data is already available; 2) private persons can carry out the tasks of the officers if they have previously approached the officers and reported the received offers to commit criminal acts; 3) provocation is possible even when the encouragement of public officials to perform certain actions is not particularly intense, insistent; 4) in court, it is the state institutions that bear the burden of refuting possible defence arguments for provocation; 5) even the confession of the accused in a situation of provocation is not adequate evidence to substantiate the guilt of the accused; 6) it is desirable that the performance of such covert actions be subject to judicial control. On the one hand, the provision of such a rich system of evaluation criteria makes the decision-making process of the issue considered in the developing judicial practice a little clearer, as it solves a number of problematic situations that have occurred in practice, such as the performance of secret procedural investigative actions when only unverifiable information is available, the assessment of the performance of law enforcement officers as private persons in such circumstances, the distribution of the burden of proof in court, when proving a case of possible provocation, and the like. However, such an abundance of evaluation criteria for possible provocation does not objectively facilitate the work of the court, in order to properly and reasonably evaluate possible such manifestations during secret procedural investigative actions, especially even in the practice formed by the court of cassation, a number of abstract and evaluative criteria are left in the question under consideration: 1) the phrase "not particularly intense, insistent" in criterion 3, 2) according to criterion 4, it is left to the court to decide on possible provocation in the case of a dispute, when evaluation criteria are proposed (the reason for which it was decided to carry out the operation; the degree of participation of the officers in committing a criminal act and the nature of the applied provocation or pressure) without specific exemplary circumstances that illustrate this, is even more abstract and requires an additional broader analysis of other possible lower instance court practices, which increases the risk of improper assessment of the situations in question; 3) the request set out in criterion 6 regarding the assignment of control over the performance of such secret procedural actions to the court is an unusual criterion in its dispositive form and is difficult to implement in its entirety, since it is the prosecutor who organizes and directs the pre-trial investigation (Article 164 of the CPC).

Thus, assessing the admissibility of data obtained through secret procedural investigative actions causes a number of problems, especially when it is necessary to properly assess a possible case of passive provocation. Next, it is appropriate to analyze in more detail another issue of the evaluation of the data obtained by these actions, related to the proportionality of the restriction of private life.

THE PROBLEM OF ASSESSMENT OF DATA OBTAINED BY SECRET PROCEDURE INVESTIGATION ACTIONS IN THE EVIDENTIARY PROCESS: REQUIREMENT OF PROPORTIONALITY OF PRIVACY RESTRICTIONS

One of the biggest problems in evaluating the data obtained during the application of secret procedural investigative actions in the evidentiary process is the proportionality of the limitation of private life. It goes without saying that a person's right to privacy is one of the fundamental rights of a person regulated in the Constitution of the Republic of Lithuania, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Criminal Law and the Law on Criminal Procedure and other laws. The Constitutional Court in its ruling of December 29th, 2004 defined the concept of private life and explained the following elements of private life: it is the way of life, family situation, living environment, relations with other people, individual's views, beliefs, habits, his physical and mental condition, health, honour, dignity, etc. In the context of the topic under consideration, it is important to pay attention to Part 1 of Article 5 of the Law on Criminal Intelligence of the Republic of Lithuania, which clearly states that individual restrictions of these rights and freedoms are temporary and can only be applied in accordance with the procedure established by law, in order to protect the rights and freedoms of another person, property, public and state security. In this regard, the SCL in case No. 2K-7-8-788/2018 has noted that "it is important to maintain the right balance between the desire to reveal criminal acts in detail and ensuring the inviolability of a person's private life".

The problem of privacy limitation is evident in legal regulation. In the case of intrusion into the privacy of a person's life by secret procedural investigation actions, specific regulation of the performance of such actions is necessary. According to the currently valid provisions of the CPC, which regulate secret procedural investigative actions, it can be seen that the actions provided for in Articles 154, 158, 159 and 160 of the CPC can be carried out in the investigation of different categories of criminal acts (covert surveillance can (at least theoretically) be used even in the investigation of criminal offences, and actions imitating a criminal act - only in the investigation of crimes). It is noteworthy that the procedure for sanctioning such actions is not the same. For example, in urgent cases, the secret surveillance provided for in Article 160 of the CPC can also be carried out by the decision of the pre-trial investigation officer, meanwhile, the actions provided for in articles 154, 158 and 159 of the CPC are possible even with a prosecutor's decision, although all actions in one way or another limit a person's privacy. Before carrying out actions that restrict a person's right to privacy, it is necessary for officials to follow the principle of proportionality, because its application presupposes the need to assess the balance between the actions performed and the restriction of the person's right to privacy in each case, which is widely noted in the legal doctrine, as R. Ažubalytė (2019). Legal doctrine notes that the more serious the crime, the more restrictions on private life are justified (Kurapka et al, 2011). As can be seen from the aforementioned existing legal regulation, it does not eliminate the threat of abuse due to the wide variety of crimes, which is why the gaps in the abstractly defined legal norms for the performance of such actions are being tried to be filled through case law. Based on the prevailing case law, it can be seen that the issue of privacy limitation in the context of proportionality often dominates. For example, in case No. 2K-7-8-788/2018 SCL dealt with the issue of the use of data on another criminal offense obtained through secret procedural investigation actions, which were aimed at finding out one criminal offense, for the investigation of a newly discovered criminal offense. The Court of Cassation clearly stated in this case that in each case, when assessing the proportionality of the received data in the context of privacy restrictions and their use in the next pre-trial investigation, it is necessary to carefully assess the circumstances of the use and receipt of such data in the context of legal norms. In another similar case No. 2K-129-976/2019 SCL emphasized the subjects of proportionality assessment during similar situations and noted, that the CPC's requirement that it is the higher prosecutor or pre-trial investigation judge who decides on the use of such data in another case shows that that this decision is intended to assess whether it is proportionate to use such data in the investigation and processing of cases concerning other persons or criminal acts, and not only to express the will of the prosecutor organizing the investigation to use significant data in the relevant case. This case law formed by the court of cassation can be evaluated positively in that it makes the process of using data obtained during secret procedural investigation actions more flexible and less formal, but the rather abstractly defined criteria relevant to the decision of this issue significantly complicate the decision of such an issue and increase the risk due to improper application of the requirements for the admissibility of evidence.

Further examining the proportionality of the restriction of private life, one can also find decisions in the case law in which the SCL spoke about the excessively long deadline for the performance of a secret procedural investigative act, e.g. in case No. 2K-7-8-788/2018, the cassation court emphasized that this is a conditional basis for restricting a person's right to privacy, but based it on the unavoidable necessity, the aim,

to investigate the criminal act of large-scale bribery. From the case law formed by the court of cassation, it can be seen that the relatively long duration of the application of secret procedural investigative actions can be justified through the principle of proportionality, in order to protect the values protected by law, prevent new large-scale criminal acts, as long as "it can be explained by an objective need, and not by artificial desire to complicate the legal situation of any suspect," as the court noted. On the other hand, such a liberal case law formed by the court of cassation opens up possibilities for the irresponsible long application of secret procedural investigation actions, based on an abstract basis – "objective need".

Thus, after analyzing the problem of evaluation of data obtained through secret procedural investigative actions related to the proportionality of the restriction of private life, a number of specific data evaluation rules have been established, which exist in case law and complicate the proper evaluation of such data. Next, it is appropriate to analyze in more detail the problem, which is revealed only by applying specific secret procedural investigative actions in legal practice.

THE PROBLEMS OF ASSESSMENT OF DATA OBTAINED BY SECRET PROCEDURE INVESTIGATION ACTIONS IN CASE LAW

Analyzing procedural coercive measures provided for in Article 159 of the CPC, that often occur in case law and cause considerable difficulties – the peculiarities of the evaluation of the data obtained during AICA, it can be seen that problems usually arise during the judicial examination, when evaluating the legality and admissibility of the data obtained in this way, i.e. the actual basis of the actions and a possible situation of provocation.

This is perfectly illustrated by the ruling of the court of cassation in case No. 2K-234-895/2018, which dealt with the issue of the active provocation of the witness who performed the AICA and the law enforcement officers to commit a criminal act during the execution of the AICA. In this case, the court emphasized that the secret procedural steps of the investigation must be carried out in an essentially passive way, i.e. a person performing actions imitating a criminal act cannot encourage, persuade or incite a person to commit a specific criminal act by other actions, and in such a case it is important to find out who (the person against whom the imitation of a criminal act is applied or the participant in the imitation) first showed the initiative to commit a criminal act. The situation in case no. 2K-234-895/2018 is significant in that the court of cassation reasonably assessed the legality of the AICA in terms of sanctioning this action, emphasizing that the actual basis for the application of the AICA was the records of conversations and correspondence between the convicted person and a specific witness as an appendix to the protocol-statement, and the initial available information showed that the perpetrator committed the criminal act himself, before the application of AICA, i.e. after the initiation of the pre-trial investigation and the sanctioning of the AICA, it was only "joined" to the already committed criminal act. In another court of cassation case No. 2K-156-511/2019, an analogous issue regarding possible provocation to commit a criminal act was resolved by a contrary decision, i.e. activity of a person acting in the knowledge of law enforcement officers, which manifested itself as an encouragement to purchase a large amount of narcotics rather than a normal amount, active calling, a request for help - is considered a provocation, as a result of which the perpetrator was provoked to commit a criminal act, which he would not have committed without the intervention of law enforcement officers, for which the data were collected during AICA, recognized as inadmissible. This justifies the need to verify the possible provocation in each case, such an assessment should be based on the totality of the detailed circumstances of the case.

Meanwhile, in case No. 2K-39-719/2019, another important issue was addressed regarding the legality of the execution of the AICA against a person who was not named in the AICA permit, and SCL established a significant rule that the measure provided for in Article 159 of the CPC is applied in order to find out the persons who commit crimes, therefore the fact that a specific person was not specified in the order for the imposition of such a measure, but only the persons acting in his interests or for his benefit, does not provide a basis to claim that the application of this measure was not possible in relation to other persons, especially when the perpetrators acted in a group of accomplices. As can be seen, this ruling of the court of cassation is important in that it compresses and makes the process of applying a secret procedural action more flexible and operative, when the court ruling on the sanctioning of AICA is not required to specify specifically all persons against whom AICA may be applied (Art. 159 of the CPC), however, at the same time, there is another real threat due to the possible abuse of this process, the unreasonably extended application of such an action and cases of possible violation of the private life of individuals, so such a chosen position of the court of cassation must be evaluated responsibly. In this context, it is necessary to mention another court of cassation case No. 2K-154-1073/2020, in which the situation was assessed when audio and video recordings were recorded, which

were not admissible in the AICA sanctioned by the court order, although they were specified in the prosecutor's request, and a person who was operating under the control of law enforcement officials ignored it and made the appropriate records. In this case, the court of cassation satisfied the cassation complaint regarding the inappropriate application of the AICA and the inappropriateness of the data obtained. First of all, it is clear from this example that the careless examination of the grounds of AICA by both the first and appellate courts led to the fact that a decision is made in the process based on illegally collected data, which cannot be considered as proper evidence in the process. Secondly, when juxtaposing this procedural decision with the rather liberal position of the court of cassation discussed earlier, it can be seen that a completely free and self-serving interpretation of the court's decision to sanction the application of the AICA is not allowed, essentially making an exception only for not naming specific persons to whom the AICA may be applied in the court ruling regarding the application of this measure, but not for the scope and nature of the permissible actions performed in relation to them.

In case law, one can find a number of criminal cases in which the secret action provided for in Article 158 of the CPC was used - the actions of pre-trial investigation officers who do not reveal their identity. The content of this action, in terms of forms of data collection, is very broad, and its essential feature is that during it, in principle, everything happens through observation, although during this procedural action it is possible to communicate with the person under investigation, but it must happen in such a way that the person , to whom this procedural action is applied, would not understand that he is being communicated with, and even more so that an officer is communicating with him (Ancelis et al., 2011). The latest case law shows that during the trial there are problems in assessing whether the limits of the judge's ruling have not been exceeded (or actions not specified in the ruling are being carried out), and it is also necessary to carefully assess whether the actions of secret investigators have turned into unsanctioned interrogations, violating the rights of the participants in the process, provided for in the CPC. For example, in case no. 1A-17-202/2016, the Court of Appeal of Lithuania evaluated the actions of undercover investigators, which were carried out with a person who realized that a law enforcement officer was communicating with him, and stated that the data collected in this way is impermissible, since an informal interrogation of the suspect was actually conducted. This position of the court is acceptable, since this unauthorized questioning violated the procedural rights of the suspect (the right to have a defence attorney, the right not to testify against himself, etc.), and the person to whom this procedural action was applied knew and understood that an officer of the law enforcement institution was communicating with him, because of which, this cannot be considered as a case of application of the measure provided for in Article 158 of the CPC. It should be emphasized that the essence of this act of secret procedural investigation is that the person does not understand that he is communicating with a representative of a law enforcement institution, does not understand that procedural actions are being carried out (Ancelis et al., 2011). It was this type of carelessness of the officials that determined that the received data was recognized as inadmissible. For a detailed analysis of the issues under consideration, another court of cassation case No. 2K-233-788/2016 is significant, which dealt with a similar problem only in other circumstances - the admissibility of making recordings of conversations between a convicted person and an undercover investigator in an isolation cell. In this situation, the court also recognized that such data cannot be recognized as admissible, since this type of data, although formally obtained by applying the procedural action provided for in Article 158 of the CPC, does not correspond to its essence, and the right of the accused to remain silent and not testify against himself is violated. This rule of evidence evaluation was also confirmed in the later practice of the court of cassation, as e.g. in case No. 2K-62-628/2019, noting that the use of such methods (informal interviews, consolidating them as an action established in Article 158 of the CPC) during the interrogation of the suspect is not allowed. Thus, it can be stated that the secret procedural investigative action provided for in Article 158 of the CPC cannot be applied formally, and their permissibility is influenced by the totality of circumstances and the need to properly ensure the procedural rights of the accused.

In another pending case No. 2K-233-788/2016 SCL formulated another data evaluation rule that is significant for the solution of the issue under consideration, which aims to protect the principles of evidence and the procedural rights of the accused, i.e. a clear ban on relying on the data provided by the pre-trial investigation officers who do not reveal their identity in the process, when the procedural actions performed by them are recognized as impermissible, i.e. although it was recognized that the data obtained by the pre-trial investigation officers who do not reveal their identity is considered inadmissible, the lower instance courts still did not avoid certain analysis and comparisons with other data in the case, especially this should not have been done, even when the suspect confessed to having committed a criminal act. On the one hand, such a rule of data evaluation formulated by the court of cassation is acceptable, since these officers' statements are derived from a source of information recognized as inadmissible, and are therefore also inadmissible, which

corresponds to the general legal principle *ex injuria jus non oritur* (right does not arise form injustice). However, the procedural decisions of the lower instance courts clearly substantiated the difficulties of making a legal procedural decision when such illegally obtained derivative data are presented in the case and directly affect the internal conviction of the courts about the guilt of the person.

CONCLUSIONS

1. After analyzing the issue of admissibility of data obtained through secret procedural investigative actions in case law, it was determined that the most difficult in practice is precisely the proper assessment of possible passive provocation, since the criteria named by legal doctrine and case law remain sufficiently abstract and of an evaluative nature, which complicates the work of the courts and increases the risks of improperly assessing the situations in question. All the more so, such an assessment process must be long, complex and extensive, as more than one episode of a criminal act is assessed, and the actions of individuals that make up the content of possible passive provocation have a less obvious influence on the perpetrator.

2. The problem of the proportionality of the restriction of private life, when applying secret procedural investigative actions, can be seen at several levels, i.e. at the legal level, the grounds and procedure for performing such actions are abstractly defined, without eliminating the threat of abuse due to the wide variety of crimes. The next level – case law, which establishes a rather liberal position regarding the use of data obtained in this way for the investigation of another newly discovered criminal act or regarding the justification of a relatively long period of application of such actions through the principle of proportionality, which further complicates the work of lower instance courts on the issue under consideration.

3. After analyzing the issue of evaluation of data obtained during the application of secret procedural investigative measures, provided for in Articles 158 and 159 of the CPC, in case law, the significant contribution of the court of cassation is observed, forming rather specific rules for evaluating such data, which complicate this evaluation process in court, i.e. analyzed exception due to the granted freedom to interpret the court decision to sanction the application of AICA due to the failure to name specific persons to whom AICA may be applied in the decision, it is required to assess whether the actions of the pre-trial investigation officers who do not disclose their identities did not turn into unauthorized interrogations and it is noted that the officers' testimony was derived from an unauthorized source of information assessment problems.

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