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**COMPARATIVE ANALYSIS OF SPECIAL EVIDENTIARY ACTIONS IN THE
SELECTED COUNTRIES OF THE CONTINENTAL LEGAL TRADITION: CROATIA,
GERMANY, AUSTRIA, AND ITALY**

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Summary

The institute of special evidentiary actions attracts attention due to the invasiveness of measures that encroach on and temporarily restrict citizens' constitutional and Convention rights. Given that these are relatively protected citizens' rights, whose restriction is possible for reasons provided by law and to the extent provided by the legislator, it is necessary to have strict material and formal conditions for the application of special evidentiary actions. The paper analyzes the normative regulation of the institute of special evidentiary actions in selected countries of the continental legal tradition: Croatia, Germany, Austria, and Italy. In this regard, the scientific methods inherent in the legal sciences have been used. Additionally, relevant domestic and foreign literature on special evidentiary actions was analyzed, with special attention paid to the normative regulation of the subject matter. Also, a comparative study of legislative solutions in selected legal systems within the continental legal circle was conducted regarding the institute of special evidentiary actions. Finally, this paper aims to analyze and comprehensively present the material and formal aspects of the application of special evidentiary actions in the observed legislations, in order to gain insight into the content and systematicity of the normative regulation of these measures. In doing so, common determinants and inherent specificities of the regulation of each of the observed legislations are emphasized.

Key words: special evidentiary actions, material conditions of application, formal conditions of application, reasoned order of the investigating judge

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1. INTRODUCTION

Special evidentiary actions, as the term implies, are a special way of obtaining evidence that represents the most powerful mechanism of state intervention in the protected rights of citizens. In the literature, they are often terminologically labeled differently as secret surveillance measures, special investigative measures, special investigative methods, covert methods, secret operations, etc., while, in essence, they represent an intervention of a certain intensity in fundamental human rights and freedoms, temporarily limiting them. The application of special evidentiary actions greatly encroaches on the right to privacy and personal life of an individual, individual rights that are proclaimed as the greatest constitutional values (Art. 35 and Art. 36 of the Constitution of the Republic of Croatia) and which are the subject of numerous international conventions and documents, especially the European Convention on the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and the General Declaration on Human Rights from 1948. The need to protect the above rights on the one hand, but also to achieve the goals of criminal proceedings, on the other hand, when the state, public interest in discovering and capturing the perpetrator, outweighs the right to protect the individual rights of the individual, has prompted the legislator to enable infiltration of the above rights in exceptional, legally justified situations. Theorists and practitioners agree that, at the current stage of social development, it is significantly more difficult to prove certain forms of crime involving elements of conspiracy and latency without the use of special evidentiary measures. Since their application often results in irrefutable evidence,² they are an effective tool in the fight against organized crime and corruption.³ The above, of course, does not completely eliminate classical or traditional evidentiary measures, but in order to combat the most serious forms of crime, they are simply no longer efficient and proportionate enough, because, due to the very nature of the most serious criminal acts and the conspiratorial actions of their perpetrators, they cannot achieve satisfactory results in criminal proceedings.⁴

The paper continues by considering the normative regulation of special evidentiary actions in the Republic of Croatia and by providing a comparative analysis of selected legislations from countries with a continental legal tradition, especially Germany, Austria, and Italy.

2. SPECIAL EVIDENTIARY ACTIONS IN CROATIAN CRIMINAL LEGISLATION

² Sharpe, S., „Covert Surveillance and the Use of Informants“, in: *The Handbook of the Criminal Justice Process*, eds. McConville, M. and Wilson, G., Oxford University Press, 2002, p. 40.

³ Clive Harfield, „The governance of covert investigation“, *Melbourne University Law Review*, Vol. 34, No. 3, 2010, p. 782.

⁴ Kaurin, T. and Skakavac, Z., „Značaj digitalne forenzike mobilnih uređaja u otkrivanju i dokazivanju krivičnih dela organizovanog kriminaliteta“, in: *Zbornik radova 5. međunarodne znanstveno-stručne konferencije, Istraživački dani Visoke policijske škole u Zagrebu, Unaprjeđivanje sigurnosne uloge policije primjenom novih tehnologija i metoda*, Zagreb, 2016, p. 77.

The Croatian legislator, striving to achieve the systematic nature of the institute of special evidentiary actions, by adopting the "new" Criminal Procedure Act (hereinafter: CPA)⁵ in 2008, consolidated the aforementioned measures under a single law. The CPA⁶ in Chapter XVIII regulates evidentiary actions (Art. 240–Art. 430) and contains numerous provisions prescribing a series of actions and procedures for collecting evidence in criminal proceedings. Special evidentiary actions are regulated by the provisions of Art. 332–Art. 339 of the CPA.⁷

Special evidentiary actions represent a special way of obtaining objects and evidence necessary for establishing facts in criminal proceedings, and which are undertaken only when there are grounds for suspicion that a certain person has committed or participated in the commission of the "catalogue" listed criminal offenses from Art. 334 of the CPA, and conducting an investigation in another way would be thwarted or disproportionately difficult (Art. 332, para. 1 of the CPA). The above affirmed the subsidiarity of applying these measures and emphasized the principle of proportionality between the gravity of the criminal offense whose discovery and proof is aimed at and the violation of the freedoms and rights of citizens that the application of the aforementioned measures entails. As an instrument of procedural coercion, special evidentiary actions are one of the most powerful mechanisms of state intervention in the fundamental rights and freedoms of citizens, which intervention is regulated by law through the established mechanism of judicial control,⁸ in the form of a reasoned order of the investigating judge.

The CPA regulates eight modalities for the execution of special evidentiary actions, which, given their nature, can be divided into several groups. Thus, we distinguish between audio and video surveillance measures (surveillance and technical recording of telephone conversations and other remote communications; interception, gathering and recording of computer data; entry on the premises for the purpose of conducting surveillance and technical recording at the premises), covert operations measures (covert monitoring and technical recording of persons and objects; controlled transport and delivery of objects from criminal offense) and measures of infiltration into criminal groups (use of undercover investigators and informants; simulated sales and purchase of certain objects, simulated bribe-giving and simulated bribe-taking; offering simulated business services or closing simulated legal business).⁹

2.1. Positive legal regulation of the institute of special evidentiary actions

⁵ Criminal Procedure Act, Official Gazette, No. 152/08. (hereinafter: CPA).

⁶ CPA, Official Gazette, No. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19, 130/20, 80/22, 36/24, 72/25.

⁷ Until the adoption of the CPA from 2008, the measures of providing simulated business services or entering into simulated legal transactions were positioned within the provisions of Art. 41, para. 1 of the Law on the Office for Suppression of Corruption and Organized Crime (Official Gazette, No. 88/2001).

⁸ Cf. Mamić, K. and Mamić, A., „Potreba izmjena kataloga kaznenih djela za posebne dokazne radnje“, *Policija i sigurnost*, Vol. 28, No. 4, 2019, p. 440.

⁹ Cf. Antonić, V. and Mitrović, D., *Posebne istražne radnje*, Sarajevo, 2012, p. 20.

The application of special evidentiary actions is conditioned by the fulfillment of certain assumptions that can be identified as material and formal. The material conditions for the application of special evidentiary actions concern the existence of grounds for suspicion, the type of criminal offense, and evidentiary difficulties that require the application of special evidentiary actions (principle of proportionality). The formal conditions, on the other hand, concern the form that must be contained in the state attorney's request and the investigating judge's order requesting or ordering the application of special evidentiary actions.

2.1.1. Material conditions for the application of special evidentiary actions

Fulfillment of material conditions is a prerequisite for ordering special evidentiary actions. Material conditions represent a minimum standard that must be met to justify a temporary restriction of citizens' constitutional rights and freedoms from the aspect of "democratic necessity" in the pursuit of social goals. They also represent a "guarantee clause" that ensures there will be no abuse of authority by public authorities responsible for conducting special evidentiary actions.¹⁰ The material conditions for the application of special evidentiary actions are regulated by the provision of Art. 332, para. 1 of the CPA, as the existence of grounds for suspicion that a certain person has committed a catalogue criminal offense and the impossibility of conducting the investigation in another way, or it would be possible only with disproportionate difficulties. From the attached, it is clear that the principle of subsidiarity emerges in the first place, i.e., the limiting condition for the application of special evidentiary actions, which is reflected in the provision of the law Art. 332, para. 1 of the CPA, which requires that these are situations in which conducting an investigation in another way would not be possible or would be hampered with disproportionate difficulties. Therefore, it is about such circumstances in which the collection of evidence would not (at all) be possible in any other way or would be disproportionately difficult, and the needs of the criminal procedure require that the evidentiary material be collected. The subsidiarity of applying special evidentiary actions is in accordance with the requirements imposed by the principle of proportionality, which presupposes that these measures are taken only in situations where it is impossible or significantly difficult to conduct an investigation in any other way.¹¹

The next constitutive material segment is the existence of a certain degree of probability of committing a criminal offense for which it is possible to order the application of special evidentiary measures. It is about the initial form and the lowest level of probability, which the legislator refers to as "grounds for suspicion". According to procedural legislation, as a condition for conducting an investigation, a plurality of these grounds for suspicion is required, therefore, a single ground for suspicion is insufficient, but "grounds" for suspicion are required. More "grounds for suspicion"

¹⁰ Živanović, K., „Posebna dokazna radnja tajnog nadzora komunikacije praksa Evropskog suda za ljudska prava u slučaju neobrazložene naredbe suda“, *NBP – Nauka, bezbednost, policija*, Vol. 23, No. 3, 2018, p. 301.

¹¹ Cf. Ivičević Karas, E., „Radnje i mjere procesne prisile radi pribavljanja predmeta za potrebe kaznenog postupka (Novine u prijedlogu Zakona o kaznenom postupku iz lipnja 2008.)“, *Hrvatski ljetopis za kazneno pravo i praksu* 15, br. 2 (2008), p. 964.

are not limited to mere hunches, but clearly state which facts give rise to suspicion.¹² Therefore, with regard to the verification of the basis of suspicion, in terms of Art. 332, para. 1 of the CPA, they imply the lowest quality of presumption about the committed criminal act that is generally required by law for undertaking certain procedural actions in the procedure.¹³ The grounds for suspicion are characterized by a low differential scope, which only enables a preliminary criminal differential diagnosis regarding the criminal offense and the possible perpetrator.¹⁴

The last substantive segment emphasizes the principle of proportionality, as the legislator states that a temporary restriction of a citizen's constitutional rights can be justified only if it is proportional to the gravity of the criminal offense committed. In other words, only if the person alone or together with other persons participated in a catalogue criminal offense that the legislator has exhaustively listed in Art. 334 of the CPA. The classification of criminal offenses under Art. 334 of the CPA is directly related to the duration of special evidentiary actions. The above points to the fact that it is precisely through the provisions on the duration of individual special evidentiary actions that the constitutional principle of proportionality is concretized. The catalogue of criminal offenses is structured into three categories according to the gravity of the criminal offenses, which also determines the possibility of an overall duration of the implementation of special evidentiary actions.¹⁵ The legislator, therefore, has only foreseen the possibility of conducting special evidentiary actions for the longest periods in the most serious forms of criminal offenses. In other words, the lower the danger, according to the classification of criminal offenses, the shorter the duration of special evidentiary actions. The general timeframe for the duration of all special evidentiary actions, as outlined in Article 332 of the CPA, is six months. This means that special evidentiary actions can be ordered during the specified period for all catalogue criminal offenses, stipulated in Art. 334 of the CPA. After the six-month period has elapsed, special evidentiary actions can be extended for an additional six months, but only in relation to the catalogue of criminal offenses contained in item 1 and 2 of Art. 334 of the CPA (excluding the criminal offenses listed in item 3). After the expiry of the aforementioned twelve-month period, further extension of special evidentiary measures for a further six months is possible only exceptionally and only for catalogue criminal offenses listed in item 1 of Art. 334 of the CPA if their extension is necessary to achieve the purpose for which they were approved. It is clear from the above that only in relation to criminal offenses from item 1 of Art. 334 of the CPA, it is possible to determine special evidentiary measures in their longest duration, i.e., in a maximum duration of up to eighteen months. Catalogue criminal offenses from item 2 of Art. 334 of the CPA may be ordered for a maximum duration of up to twelve months, while other catalogue criminal offenses from item 3 of

¹² Karas, K., „Sudska praksa o policijskom postupanju: osnove sumnje i osnovana sumnja; zatvoreni krug indicija“, *Policija i sigurnost*, Vol. 20, No. 4, 2011, p. 619.

¹³ Supreme Court of the Republic of Croatia, No. I Kž 144/2010-7 of 14 October 2010; No. I Kž-Uš 165/15.-4 of 11 January 2016.

¹⁴ Mršić, Ž., „Osnove sumnje – izvorište policijskih ovlasti“, *Hrvatska pravna revija*, Vol. 11, No. 4, 2011, p. 73.

¹⁵ Gluščić, S., „Izvidi kaznenih djela prema Noveli Zakona o kaznenom postupku“, *Hrvatski ljetopis za kazneno pravo i praksu*, Vol. 20, No. 2, 2013, p. 623.

Art. 334 of the CPA may be ordered for a maximum duration of up to six months. The above is a clear indicator of the concretization of the principle of proportionality, whereby the legislator ensured that the gravity of the criminal offense was proportional to the duration of the special evidentiary measures.

2.1.2. Formal conditions for the application of special evidentiary actions

The formal condition for applying special incoming actions consists of two cumulative elements. The first element is the state attorney's procedural initiative, made through a written, reasoned request. The acceptance of this state attorney's request by the investigating judge, in the form of an order to carry out a specific special evidentiary action, constitutes the second element of the formal condition for their application.¹⁶ By using the legal formulation "written reasoned request of the state attorney", the legislator emphasized the importance of the justification of the request. Although the legislator does not define the content of the state attorney's request, it may be inferred that it is determined in accordance with the content of the order of the investigating judge approving the implementation of special evidentiary actions. The justification for the request should, therefore, contain all the arguments for the application of a special evidentiary measure, starting from the circumstances that give rise to the grounds for suspicion that a certain criminal offense has been committed, up to the impossibility or significant difficulty of collecting evidence in another way, i.e., it is up to the state attorney to point out the fulfillment of the general conditions for determining special evidentiary measures, as well as the fulfillment of the special conditions for the application of a particular evidentiary measure. The reasoned request should also contain the goal that is to be achieved by carrying out a particular special evidentiary action, as well as the necessary data for determining it (e.g., available data related to the suspect, premises that will be subject to monitoring and recording, etc.). The legislator also emphasizes the importance of the reasoning in the investigating judge's order, which should be explained in relation to the facts that justify its issuance, i.e., whether the conditions for issuing the order have been met and what substantiates that conclusion.¹⁷ Failure to issue an order by the investigating judge undoubtedly implies that all previous material assumptions were not met, i.e., that the state attorney in his request for issuing special evidentiary actions did not sufficiently explain and substantiate the circumstances necessitating their undertaking.

Although it is prominent for all special evidentiary actions that the court, as a rule, decides on the interference with the rights and freedoms of the defendant, by means of a written, reasoned order, the legislator exceptionally provided for the possibility of issuing an order by the state attorney (the so-called urgent state attorney's order). Such an exceptional right can be "exercised" by the state attorney only if, due to the risk of delay, there are reasons to believe that the order of the investigating judge will not be processed in time. The state attorney's order is limited to a period of twenty-four hours, and within eight hours of its issuance, the state attorney is obliged to submit

¹⁶ Ignjatović, Đ. and Škulić, M., *Organizovani kriminalitet*, Beograd: Pravni fakultet, 2010, p. 275.

¹⁷ See the decision of the Supreme Court of the Republic of Croatia, No. I KŽ-Us 166/2017-4 of January 11, 2018.

it to the investigating judge for validation, indicating the time of issuance of the order and an explanation justifying its urgency. The above ensures a mechanism not only for judicial control of legality, but also for the protection of the defendant's rights.

3. NORMATIVE REGULATION OF THE INSTITUTE OF SPECIAL EVIDENCE ACTIONS IN SELECTED COUNTRIES WITH THE CONTINENTAL LEGAL TRADITION

The subject chapter provides insight into the legislative regulation of the institute of special evidentiary actions in countries with a continental legal tradition — Germany, Austria, and Italy — by presenting the material and formal conditions of their application and the time limits governing their duration.

3.1. Normative regulation of special evidentiary actions in Germany

The main legal basis for the application of special evidentiary actions is the German Criminal Procedure Act (hereinafter: StPO).¹⁸ The German legislator dispersed special evidentiary actions through two Chapters of the StPO, namely through Chapter VIII entitled "Investigative measures" (German: *Ermittlungsmaßnahmen*), within the Book 1¹⁹ and Chapter II entitled "Preparations for the indictment" (German: *Vorbereitung der öffentlichen Klage*) within the Book 2 of the StPO.²⁰ Given that certain forms of special evidentiary actions, as is evident, are not systematized in a separate chapter of the StPO, neither are the material prerequisites for their application universally provided for by a single provision for all forms of special evidentiary actions. In accordance with the above, material assumptions and the method of undertaking special evidentiary actions in German criminal legislation are regulated by the provisions of §§ 100a-110d of the StPO and, analogously to the Croatian legislation, can be summarized as:

1. the existence of a certain degree of suspicion (grounds for suspicion) that

¹⁸ German Criminal Procedure Act (Strafprozeßordnung - StPO), BGBl. I S. 1074, 1319, last amended by Art. 2 of the Act of July 17, 2025 (BGBl. I No. 163), available at: <https://www.gesetze-im-internet.de/stpo/>

¹⁹ The legislator, in Book 1, Chapter VIII, lists several special evidentiary actions under "Investigative measures": Seizure of postal items and request for information (§ 99 StPO), Telecommunications surveillance (§ 100a StPO), Covert remote search of information technology systems (§ 100b StPO), Acoustic surveillance of private premises (§ 100c StPO), Acoustic surveillance outside of private premises (§ 100f StPO), Traffic data capture (§ 100g StPO), Other measures outside of private premises (§ 100h StPO), Technical investigation measures in respect of mobile terminals (§ 100i StPO), Undercover investigators (§§ 110a–110c StPO).

²⁰ The legislator, in Book 2, Chapter II, entitled "Preparations for indictment", which refers to the preliminary proceedings, regulates the following measures: Storage and matching of data obtained at checkpoints (§ 163d StPO), Order for observation during police checks (§ 163e), Longer-term observation (§ 163f StPO).

2. a person has, either as an offender or participant, committed a serious crime of the kind referred in § 100a para. 2 StPO or, in cases where there is criminal liability for attempt, has attempted to commit such an offense or has prepared such an offense by committing another offense (principle of proportionality), and
3. other means of establishing the facts or determining the accused's whereabouts would be much more difficult or would offer no prospect of success (principle of subsidiarity).²¹

The formal condition for the application of special investigative measures is implemented through a reasoned order issued by the investigating judge, which is either initiated on the court's own initiative²² or at the request of the state attorney. Unlike the Croatian legislator, the German legislator does not state that the state attorney's request, which precedes the issuance of a court order, must be "reasoned". However, it can be deduced by logical reasoning that the state attorney's request will be reasoned, as this is a prerequisite for the court to issue its decision and justify it in detail.

Furthermore, the German legislator does not recognize a unified initial time limit for the order, but rather provides different durations depending on the particular type of special evidentiary actions applied. Thus, certain special evidentiary actions are limited to a maximum of one month, with the possibility of a further extension of up to one month, provided that the conditions for applying the measure still exist, and taking into account the information obtained during the investigation.²³ Certain special evidentiary actions are limited in time to a period of up to three months, the extension of which is possible for a further (maximum) three months if this is justified by the results of the special evidentiary actions carried out to that point and the conditions for implementing the order still exist (§ 100e para. 1 of the StPO).²⁴ Finally, certain evidentiary measures are limited in time to a maximum of one year, with the possibility of a further extension of up to three months if the conditions for issuing the order still exist (§ 163e para. 4 of the StPO).²⁵

The German legislator recognizes the institution of an urgent public prosecutor's order, which can be applied in most special evidentiary actions, in situations where it is likely that a court order will not be obtained in a timely manner.²⁶ Only exceptionally does the German legislator go a step further and stipulate that an urgent order can be issued only by a court, or rather by a single

²¹ See Koval, A. A., „International Experience Dealing with Secret Investigative Actions in Investigation of Crimes“, *Journal of Eastern European Law*, No. 49, 2018, p. 48.

²² In the form of an urgent court order, in situations that cannot be delayed, in the case of special evidentiary actions from §100b and §100c StPO.

²³ Special evidentiary actions: Covert remote search of information technology systems (§ 100b StPO) and Acoustic surveillance of private premises (§ 100c StPO).

²⁴ Special evidentiary actions: Telecommunications surveillance (§ 100a StPO), Storage and matching of data obtained at checkpoints (§ 163d StPO), and Longer-term observation (§ 163f StPO).

²⁵ Special evidentiary action Observation during police checks (§ 163e StPO).

²⁶ An urgent public prosecutor's order is possible when implementing the measure of Temporary seizure of postal items and request for information (§ 100, para. 2 StPO), Telecommunications surveillance (§ 100e, para. 1 StPO), Traffic data capture (§ 100g StPO), Technical investigation measures in respect of mobile terminals (Art. 100i, para. 3 StPO), and when it comes to implementing measures of Storage and matching of data obtained at checkpoints (§ 163d StPO), an Order for observation during police checks (§ 163e), and Longer-term observation (§ 163f StPO).

judge, the president of the panel of the criminal department of a regional court.²⁷ An urgent order of a single judge loses its force if the criminal chamber of the regional court (German: *Strafkammer*) does not validate it within three working days. Therefore, the possibility of urgent action in the above situations is reserved only and exclusively for the court, not for the public prosecutor. It is clear from the provisions of the German StPO that the German legislator has failed to regulate the public prosecutor's further course of action when the court refuses to validate an urgent public prosecutor's order, raising a series of questions. Does the public prosecutor have the instrument at his disposal to appeal the court decision in question, or is the court's decision final and irrevocably entails the illegality of the results of the measures taken?

3.2. Normative regulation of special evidentiary actions in Austria

Provisions regulating special evidentiary actions are dispersed in several sections of Title VIII of the Criminal Procedure Act (hereinafter: StPO),²⁸ which is entitled "Main Part: Investigative Measures and Collection of Evidence". Within the aforementioned chapter, special evidentiary actions are positioned within the fourth section entitled "Surveillance, undercover investigations, and fictitious transactions" (§§ 129–133 of the StPO) and into the fifth section entitled "Seizure of letters, disclosure of data concerning transmission of messages, localizing a technical device, event-specific data storage, and surveillance of communication, encrypted communication, and persons" (§§ 134–140 of the StPO). The reason for this dichotomous approach lies in the different legal bases for its undertaking. Thus, in the case of special investigative measures under the fourth section, which, in theory, are also called "apparent investigative measures", the order to take them is issued by the state attorney, while, in certain cases when the legal conditions are met, the measures are taken independently by the criminal police. Investigative measures from the fifth section, which in theory are called "special investigative measures", are taken exclusively on the basis of a court order.²⁹

3.2.1. Apparent investigative measures

Complete supervision over implementation of apparent investigative measures (§ 129 – Art. 133 of the StPO), which incorporate Surveillance (§ 130 of the StPO),³⁰ Undercover investigations (§

²⁷ When it comes to special evidentiary actions, Covert remote searches of information technology systems (§ 100b StPO) and Acoustic monitoring of private premises (§ 100c StPO).

²⁸ Austrian Criminal Procedure Act, Strafprozeßordnung (StPO), BGBl. No. 631/1975, 19/2004, version of July 19, 2025, available at: <https://www.jusline.at/gesetz/stpo/gesamt>.

²⁹ Gluščić also mentions the division of special evidentiary actions in Austrian legislation into apparent and special investigative measures. See Gluščić, S., „Posebne dokazne radnje“, *Policija i sigurnost*, Vol. 21, No. 3, 2012, p. 566.

³⁰ Surveillance implies covert monitoring of a person's behavior (§ 129, item 1 of the StPO), and is analogous to the Croatian special evidentiary action of covert monitoring and technical recording of persons (and objects) from Art. 332, para. 1, item 4 of the CPA.

131 of the StPO)³¹ and the Fictitious transactions (§ 132 of the StPO),³² is in the hands of the state attorney, with a complete absence of judicial control and supervision. The material prerequisites for the use of apparent investigative measures are analogous to those foreseen by the Croatian legislator for the application of special evidentiary actions, which are realized through

1. the existence of grounds for suspicion of
2. committing a (serious) criminal offense
3. it appears necessary for the investigation of a crime or for determining the whereabouts of the suspect (§ 130, para. 1 of the StPO) would otherwise be futile or significantly more difficult (§ 130, para. 2, § 132 of the StPO).

However, the Austrian legislator does not envisage a unified pattern or the same intensity of the material prerequisites for each individual type of apparent investigative measure. Thus, the seriousness of the criminal offense that justifies the application of apparent investigative measures is nuanced differently from the existence of grounds for suspicion of having committed any criminal offense (Brief surveillance, § 130, para. 1 StPO), to the commission of a serious criminal offense from § 17. StGB (Use of undercover investigators, § 131, para. 1 StPO), the intentionally committed criminal offense punishable by more than one year's imprisonment (Systematic surveillance, § 130, para. 3 of StPO, Use of undercover investigators, § 131, para. 2 StPO), to the commission of the listed criminal offenses (§ 132 StPO).

Apparent investigative measures may be carried out by the criminal police on their own initiative when the legal requirements are met (§ 133, para. 1, StPO). In that case, the duration of the measure is limited to forty-eight hours, after which it is necessary to obtain an order from the state attorney for the further continuation of the measures. If the criminal police have submitted a report on the measures taken to the state attorney (§ 100, para. 2, item 2 StPO) immediately after the expiry of the aforementioned period, in that case the observation may be continued for a maximum of fourteen more days (§ 130, para. 3, item 2 StPO).

An order for the conduct of surveillance supported by the use of technical means for a period exceeding forty-eight hours or to be carried out outside federal territory must be ordered by the public prosecutor (§ 130, para. 2, StPO). Also, Systematic surveillance (§ 130, para. 3, StPO) and Long-term and systematic undercover investigations (§ 131, para. 2, StPO) may only be ordered or approved by the public prosecutor for the period "that is likely to be necessary to achieve their purpose", but not more than three months. Since there is no judicial control in the conduct of a

³¹ An Undercover investigation implies the use of undercover investigators ("members of the criminal police") or informant ("other persons acting on behalf of the criminal police"), who neither disclose nor reveal their official position or their mission (§ 129, item 2 of the StPO) and it is analogous to the Croatian special evidentiary action of the Use of undercover investigators and informants from Art. 332, para. 1, item 5 of the CPA.

³² Fiction transaction means the attempt or apparent execution of criminal offenses, insofar as these consist of acquiring, obtaining, possessing, importing, exporting, or transiting objects or assets that have been alienated, originate from a crime or are dedicated to the commission of such a crime, or whose possession is absolutely prohibited (§ 129, item 3 of the StPO). It is analogous to the Croatian special evidentiary action, simulated sales and purchase of certain objects, simulated bribe-giving, and simulated bribe-taking, as set forth in Art. 332, para. 1, item 6 of the CPA.

systematic investigation, or in the use of undercover investigators, entry into a home or other protected premise for the purpose of carrying out a measure of undercover investigation cannot be carried out without the consent of the owner (§ 131, para. 4, StPO). The owner's consent may not be obtained by deception. The Austrian legislator also contains an explicit provision prohibiting the use of an agent provocateur, i.e., inciting the accused to commit a criminal offense, and states that the state attorney shall refrain from prosecuting an accused person for the criminal offense to which he was incited (§ 133, para. 5, StPO).

3.2.2. *Special investigative measures*

The material prerequisites for the application of special investigative measures³³ are analogous to those of apparent investigative measures. Specifically, they involve the following conditions:

1. a certain degree of suspicion regarding
2. the commission of a criminal offense of a certain gravity
3. the measures are necessary for the purpose of detecting criminal offenses (§ 135, para. 1, StPO), for determining information about the accused (§ 135, para. 2, item 3 StPO) or for determining the whereabouts of a fugitive or absent suspect (§ 135, para. 2, item 4 StPO), which would be significantly more difficult or impossible without the application of special investigative measures.

The Austrian legislator recognizes the varying degrees of probability or suspicion regarding the commission of a criminal offense. As a result, it mandates different levels of suspicion for committing a crime in correlation with special investigative measures taken. It requires the existence of "Initial suspicion" (German: *Anfangsverdachts*) for taking data storage, § 135 2b StPO; "Simple suspicion" (German: *einfacher Verdacht*) for monitoring telecommunications traffic data, § 135 para. 2 StPO; "Concrete suspicion" (German: *konkret Verdächtigt*) in the case of the seizure of letters, § 135 para. 1 StPO, and "Strong suspicion" (German: *dringender Verdacht*) in the case of monitoring telecommunications traffic data, § 135 para. 2, items 2 and 4 StPO.

³³ Special investigative measures include 1) seizure of letters (§ 135, para. 1 of StPO), 2) disclosure of data concerning transmission of messages (§ 135, para. 2 of StPO): a) localization of a technical device (§ 135, para. 2a of StPO) and b) event-specific data storage (§ 135, para. 2b of StPO), 3) monitoring of telecommunications content (§ 135, para. 3 of the StPO), and 4) optical and acoustic surveillance of persons (§§ 136–140 of the StPO), and are undertaken on the basis of a court order.

The gravity of the criminal offense is also a variable component depending on the application of a particular type of special investigative measure, so the legislator requires that the application of the measure contributes to the detection of a criminal offense committed with intent for which a prison sentence of more than six months is prohibited (§ 135, para. 2, item 2, § 135, para. 3, item 1, item 3a and item 4 of the StPO), or a prison sentence of more than one year (§ 135, para. 1, para. 2, item 3 and item 4 of the StPO), or a criminal offense for which a prison sentence of more than ten years is prescribed (§ 136, para. 1, item 3 and § 135a, para. 1, item 3 of the StPO).

With the exception of special investigative measures of surveillance (§ 136 para. 1, item 1 StPO), which the criminal police may initiate independently, and data storage (§ 135 para. 2b StPO), which requires an order from the public prosecutor's office, all other investigative measures necessitate court approval. Furthermore, the implementation of additional special investigative measures (§ § 135–136 StPO) requires an order by the public prosecutor, based on prior court approval (§ 137 para. 1 StPO), while entry into a specific dwelling or other premises protected by the right of possession for surveillance purposes (§ 136 para. 2 StPO) always requires a court order in each individual case.

Regarding the required content of the justification, legislation mandates that orders and judicial authorizations for the seizure of letters (§ 135, para. 1 StPO) contain the designation of the proceedings, the name of the accused, the offense of which the accused is suspected and its legal designation, as well as the facts demonstrating that the order or authorization is necessary and proportionate for the investigation of the offense, and must inform the person affected by the order or authorization (§ 138, para. 1 StPO). For warrants authorizing special investigative measures under § 135 and § 136 StPO, the warrants must also include: (1) the names or identifying characteristics of the owner of the technical equipment; (2) the location of the object; (3) the type of message transmission, technical equipment, or technical means anticipated for optical and acoustic monitoring; (4) the start and end times of monitoring; (5) the premises subject to entry under the order; and (6) the facts indicating a serious danger to public safety (as required by § 136 para. 4 StPO).

Perhaps it is precisely because of the delegation of authority to the state attorney to independently decide on the application of certain evidentiary actions that there has been a general lack of normative regulation of the institute of an urgent state attorney's order, and, therefore, the Austrian legislative system does not even recognize the possibility of subsequent judicial validation of the order, at least when it comes to special evidentiary actions. The only exception is for the detention of shipments, which postal and other transport organizations may refuse if the court does not approve the order within three working days of its issuance by the state attorney.

Furthermore, the Austrian legislator does not contain a uniform provision that precisely determines the time duration of special evidentiary actions. In fact, for all special investigative measures from § 135 and § 136 StPO (with the exception of the measure from § 135, para. 2d StPO which can last for a maximum of twelve months) is failed to specify the exact initial duration of the order, stating only that the measures "may only be ordered for the period that is likely to be

necessary to achieve its purpose". Thus, certain measures can be extended in any case if, based on certain facts, it can be assumed that "further implementation of the investigative measure will be successful". Also, the Austrian legislator did not set any criteria or normative limits for assessing the "success of the further implementation of the measure", and it is questionable how such a normative expression, without further definition, can serve as a justification for limiting citizens' constitutional right to privacy. Such a terminologically vague term makes the legal provision unclear and non-transparent, leaving room for arbitrary interpretation and action by the bodies before which the proceedings are conducted. The Explanatory Remarks suggest that the maximum period of duration of the measures should be one month. However, as the explanations are not legally binding, it is up to the state attorney to determine the period of time he needs to fulfil the purpose of implementing the measures.³⁴

3.4. Normative regulation of special evidentiary actions in Italy

The primary legal framework governing special evidentiary actions is the Italian Code of Criminal Procedure (hereinafter: CPP),³⁵ although certain forms of special evidentiary actions are also regulated by other laws and Presidential Decrees. Special evidentiary actions are addressed in Book III of the CPP, which governs evidence, specifically within Title III, "Means for obtaining evidence" under Chapter III, "Seizure" (Art. 253–Art. 265)³⁶ and Chapter IV, "Interception of conversations or communications" (Art. 266–Art. 271).³⁷ As can be seen, in the wide range of special evidentiary actions familiar to comparative legislation, the Italian legislator, under the auspices of the CPP, regulated the matter in question quite narrowly. This does not mean that the special evidentiary actions regulated by the CPP are the only ones known to Italian legislation, since certain forms of special evidentiary actions are regulated by individual provisions of the regulations on the suppression of organized crime or by decrees with the force of law. In addition to the special evidentiary actions regulated by the provisions of the CPP, measures such as optical and acoustic surveillance of individuals, covert monitoring and technical recording, the use of undercover investigators, simulated bribe-giving, simulated purchase of objects related to criminal offenses involving the smuggling of weapons, ammunition, explosives, and drugs, as well as the controlled transport and delivery of items from criminal offenses, are also implemented. These actions are not primarily, or at all, regulated by the CPP, but rather by specific regulations

³⁴ Cf. Kert, P. and Lehner, A., „The Austrian system“, in: *Toward a Prosecutor for the European Union*, Volume 1, eds. Katalin Ligeti, Oxford and Portland, Oregon: Hart Publishing, 2013, p. 27.

³⁵ Codice di Procedura Penale 2023 (CPP), Regio Decreto of September 22, 1988, No. 447, available at: https://www.brocardi.it/codice-di-procedura-penale/#google_vignette

³⁶ Special evidentiary actions positioned within Chapter III of the CPP are: Seizure of correspondence (Art. 254 CPP), Seizure of electronic data at the premises of providers of computer, electronic, and telecommunication services (Art. 254-bis CPP), and the Seizure in banks (Art. 255 CPP).

³⁷ Within Chapter IV of the CPP, the legislator regulates the Interception of telephone conversations or communications and other forms of telecommunication (Art. 266 of the CPP), and Interception of computer or electronic communications (Art. 266-bis of the CPP).

addressing the suppression of organized crime or particular forms of criminal offenses, or by regulations with the force of law.

In the context of the application of special evidentiary actions, in the continuation of the paper, the emphasis will be only and exclusively on special evidentiary actions of interception of telephone conversations or communications and other forms of telecommunication (Art. 266 of the CPP) and interception of computer or electronic communications (Art. 266 bis of the CPP). Art. 267, para. 1 of the CPP expressly states that special evidentiary actions can be carried out only if there is "serious suspicion that an offense has been committed and the interception is absolutely necessary to continue the investigation." Therefore, the material conditions for the application of the special evidentiary act of interception are:

1. the existence of a certain level of suspicion, "serious indications" (Italian: *gravi indizi di reato*)
2. that criminal offenses from Art. 266 of the CPP have been committed
3. the interception is "absolutely necessary" to continue the investigation (Italian: *assolutamente indispensabile*).

The legislator evaluates "serious suspicion" related to the commission of a criminal offense objectively and impartially. Jurisprudence binds them to the existence of a criminal act, rather than to the guilt (Italian: *reita*) of a specific subject. Therefore, to undertake a legitimate interception, there is no need for suspicion that would depend on identifying the person whose communication is being intercepted.³⁸ Interception can only be applied to more serious crimes, such as intentional crimes punishable with the penalty of either a life sentence or imprisonment for a maximum term exceeding five years; crimes against the public administration punishable with the penalty of imprisonment for a maximum term of at least five years; crimes concerning narcotic or psychotropic substances; crimes concerning weapons and explosive substances; smuggling crimes; child pornography from Art. 600-ter of the Criminal Code (CP)³⁹ and for some minor criminal offenses such as insult, threat, usury, illegal financial activity, inside dealing, market manipulation, harassment or disturbance of persons by telephone.

The third condition from Art. 267, para. 1 of the CPP, "absolutely necessary to continue the investigation", can have no other meaning than the impossibility of obtaining evidence in any other way.⁴⁰

³⁸ From the decision Sez. IV, 16.11.2005., Bruzzese, Mass. Uff., 233184, according to Bonilini, G. and Confortini, M. eds. *I Codici Ipertestuali; Codici di Procedura Penale commentato*, Italia: Wolters Kluwer, 2012, pp. 1546–1547.

³⁹ Codice penale 2024 (CP), Regio Decreto of October 19, 1930, No. 1398, updated on October 23, 2025, available on: <https://www.brocardi.it/codice-penale>

⁴⁰ Balducci, P., *Le garanzie nelle intercettazioni tra Costituzione e legge ordinaria*, Milano: Giuffrè, 2002, p. 111; Spangher, G., *La disciplina italiana delle intercettazioni di conversazioni o comunicazioni*, Archivio Penale, 1994, p. 5; Bruno, P., „Intercettazioni di comunicazioni o conversazioni“, in: Digesto IV delle Discipline Penali, VI, Torino, UTET, 1993, 189; Bonilini and Confortini, *I Codici Ipertestuali; Codici di Procedura Penale commentato*, op. cit., p. 1549.

The Italian legislator provides special material assumptions for the criminal offenses of organized crime and telephone threats,⁴¹ introducing modified or relaxed material conditions of application. Thus, when the criminal offenses of organized crime and telephone threats are at issue, the legislator, pursuant to Art. 13, Law No. 203 of July 12, 1991, requires:

- a) the existence of sufficient (rather than serious) suspicion of the commission of
- b) the criminal offense of organized crime or telephone threats
- c) the interception is necessary (not absolutely necessary) to continue the investigation.⁴²

Analogous to the Croatian legislative system, the Italian legislator requires, as a formal condition for the application of special evidentiary measures, the prior existence of a request from the state attorney for the application of the measure, while it is within the authority of the Preliminary Investigation Judge (Italian: *giudice per le indagini preliminari*) to authorize such a request. The Preliminary Investigation Judge does not have the authority to investigate, rather, it participates as a body supervising the activities of the state attorney and as a body guaranteeing the rights of the accused, particularly when measures that constitute interventions in the area of privacy are to be applied. However, since the legislator does not explicitly require that the request of the state attorney be justified, but only states that "The Public Prosecutor shall require the Preliminary Investigation Judge to issue an authorization for ordering the activities referred to in Art. 266", some theorists believe that Art. 267, para. 1 of the CPP is too vague. Does this mean that the Preliminary Investigation Judge, who is formally responsible for "authorizing" the request of the Public Prosecutor, i.e., overseeing the issuance of an order for the interception of telephone conversations or communications and other forms of telecommunication, is paradoxically unaware of the facts on which the Public Prosecutor's request, i.e., the investigation, is based?⁴³ For the stated reason, some authors contend that it is challenging for the Preliminary Investigation Judge to assess the seriousness of the request, while in practice difficulties may arise in the segment of

⁴¹ In response to urgent circumstances necessitating decisive action against organized crime, and pursuant to Art. 77 and Art. 87 of the Constitution, the President of the Italian Republic issued a decree with the force of law on May 13, 1991 (Legislative Decree of May 13, 1991 No. 152, published in the Official Gazette No. 110 of May 13, 1991 and converted into Law No. 203 of July 12, 1991, published in the Official Gazette No. 162 of July 12, 1991). This Decree, specifically Chapter VII under the title "Modification to the rules on interception of conversations or communications," incorporates Art. 13, which authorizes the interception of conversations and communications when necessary for investigations related to criminal acts of organized crime or telephone threats, provided there are sufficient indications (Italian: *sufficienti indizi*). The revised conditions for application extend to proceedings involving criminal offenses of terrorism and kidnapping for ransom. Notably, kidnapping is traditionally regarded as a typical organized crime offense, generally involving multiple participants, although it can also be committed by a single individual. See Decreto legge 13 maggio 1991 n. 152, available on https://www1.interno.gov.it/mininterno/export/sites/default/it/assets/files/14/0426_DECRETO_LEGGE_13_maggio_1991_n._152.pdf

⁴² Chapter VII – Modification to the rules on interception of conversations or communications, Art. 13.

(1) Regardless of the provisions of Art. 267 of the CPP, authorization to carry out the actions provided for in Art. 266 of the same law is issued with a reasoned order when there are sufficient indications of the commission of criminal acts of organized crime or threats by telephone, and the interception is necessary for the investigation. (D. L. May 13, 1991. n. 152 – Art. 13)

⁴³ Galli, F., „The interception of communication in France and Italy – what relevance for the development of English law?“, *The International Journal of Human Rights*, Vol. 20, No. 5, 2016, p. 671.

the explanation of the Preliminary Investigation Judge's order,⁴⁴ since he is asked to approve the taking of actions that potentially violate the right to privacy, without prior full insight and access to the file. Despite the above, regarding the material conditions for application, it is clear that the Public Prosecutor must, in addition to the request to be authorized to conduct a special evidentiary action from Art. 266 of the CPP, provide the Preliminary Investigation Judge with proof of the existence of "serious suspicion of a criminal offense", as well as the fact that the interception is "absolutely necessary to continue the investigation".

Finally, interception is carried out based on the authorization of the Preliminary Investigation Judge in the form of a reasoned order, known as the "motivated decree" (Italian: *decreto motivato*). The Italian legislator, apart from specifying the manner of implementation and the duration of the order (Art. 267, para. 3 of the CPP), does not specify other details that the order should contain. However, the Constitutional Court⁴⁵ has also emphasized in its decision that "the judge, in view of the powers granted to him, must specifically justify each authorization of interception by means of a written reasoned order (Italian: *la motivazione del decreto autorizzativo*).⁴⁶ It follows that the obligation to provide written reasons for the Preliminary Investigation Judge's order (motivational obligation) is not met by simply quoting or paraphrasing legal provisions, or by referring to the content of the investigative authorities' request.⁴⁷ Unfortunately, case law has devalued the importance of the reasons for the order by allowing the Preliminary Investigation Judge to (only) refer to the reasons for the request of the Public Prosecutor.⁴⁸

The Italian legislator also recognizes an urgent public prosecutor's order in situations where there are "justified reasons to believe that any delay can seriously hamper the investigation" (Art. 267, para. 2, CPP).⁴⁹ In such situations, the public prosecutor may order interception by a written and reasoned order (decree), in which, in addition to the general conditions, he must also provide an explanation of why he considers that a delay could seriously hamper the investigation. The public prosecutor must forward immediately, and, in any case, within twenty-four hours, his reasoned decree to the Preliminary Investigation Judge. The Preliminary Investigation Judge is obliged, within forty-eight hours of the delivery of the public prosecutor's order, to decide on its validation by reasoned order, which must contain the reasons why he considers the urgent public

⁴⁴ See Siracusano, et al., *Diritto processuale penale Vol II*, Milano: Giuffrè, 2006, pp. 151–152.

⁴⁵ C. Const. 6.4.1973, No. 34, in FI, 1973, I, 953, example according to Bonilini and Confortini, I Codici Iperestuali; Codici di Procedura Penale commentato, *op. cit.*, p. 1550.

⁴⁶ See Bonilini and Confortini, I Codici Iperestuali; Codici di Procedura Penale commentato, *op. cit.*, p. 1550.; Tonini, P., *Manuale di procedura penale, Quindicesima edizione*, Milano: Giuffrè Editore, 2014, p. 397.

⁴⁷ C., S.U., 26.11.2003, Gatto, in DPP, 2004., 280; conf. C., S.U., 28.11.2001., Policastro, in DPP, 2003, 194; C., S.U., 21.6.2000., Primavera, in CP, 2001, 69; C., Sez. I., 3.2.2005., Gallace, in Gdir, 2005, 20, 72; C., Sez. VI, 25. 11. 2003, Matarelli, in Gdir, 2004, str. 17, str. 95; C., Sez. V, 15.2.2000, Coppola, in Mass. Uff., 215980; examples according to Bonilini and Confortini, I Codici Iperestuali; Codici di Procedura Penale commentato, *op. cit.*, p. 1552.

⁴⁸ Tonini, *Manuale di procedura penale, Quindicesima edizione*, *op. cit.*, p. 397; Filippi, L., *L'intercettazione di comunicazioni*, Milano: Giuffrè, 1997, p. 108. Analogously see Camon, A., *Le intercettazione nel processo penale*, Milano: Giuffrè, 1996, p. 115.

⁴⁹ See Ruggeri, S., *Audi Alteram Partem in Criminal Proceedings, Towards a Participatory Understanding of Criminal Justice in Europe and Latin America*, Springer, 2017, p. 28.

prosecutor's order to be lawful (Art. 267, para. 2, CPP). If the Public Prosecutor's order is not subsequently approved within the specified time limit, the interception shall not be continued, and the results of such an interception cannot be used as evidence in the proceedings (Art. 267, para. 2, CPP). It is clear that the Italian legislator, unlike the Croatian one, completely left the decision on validation of the public prosecutor's order to the Preliminary Investigation Judge, without foreseeing the possibility that, in the event of disagreement, the final decision on this matter would be made by the panel of the same court.

With regard to the time limit for the order to undertake special evidentiary actions, the legislative provision of Art. 267 of the CPP lacks precision, since the time limit for the Preliminary Investigation Judge's order is not explicitly stated anywhere, but the legislator only limits the time limit for the Public Prosecutor's order to a maximum of fifteen days (Art. 267, para. 3 of the CPP). It is only from the CPP's comments that it is clear that the time limit should not apply only and exclusively to the Public Prosecutor's order, but that the provision in question should also apply to the Preliminary Investigation Judge's order.⁵⁰ Since the order is limited to fifteen days, with the possibility of a further fifteen-day extension, it is clear that the Italian legislator provides for a significantly shorter duration than is the case in the other countries with a continental legal tradition considered. The exception is organized crime, where the initial time limit for the order is up to forty days, with the possibility of successive extensions for a further twenty days, which is significantly longer than in relation to "common" catalog crimes, but still significantly shorter than the time limit for orders in relation to other comparative legislation, including Croatian. Furthermore, Italian legislation completely lacks a normative regulation of the circumstances under which it is possible, and whether it is possible at all, to extend the order beyond the prescribed time limits. The fact that the legislator did not foresee a maximum duration for interception is hardly compatible with the constitutional framework and the delegating law, especially in light of the case law guidelines aimed at ensuring guarantees and judicial control through the reasoning of the Preliminary Investigation Judge's order.

4. CONCLUDING CONSIDERATIONS

In the context of regulating special evidentiary actions, it is clear that all observed legislation in countries with a continental legal tradition, except for Croatia, is characterized by the dislocation of provisions regulating the domain of special evidentiary actions across several provisions in different chapters of the law on criminal procedure. Considering the intensity of investigative measures encroaching on individual rights and the necessity of judicial control, it would be pragmatic to consolidate all measures under the common denominator of special evidentiary actions and separate them into a distinct chapter of the law. In this way, the integral approach, characteristic of the Croatian legislative system, is reflected in the systematic collection of individual evidentiary actions into a single unit of "special evidentiary actions" and in the unified

⁵⁰ Bonilini and Confortini, I Codici Iperestuali; Codici di Procedura Penale commentato, *op. cit.*, pp. 1557–1558.

normative regulation of that special way of gathering evidence. In this direction, the Croatian legislator has demonstrated the (highest) level, not only of systematicity, but also of comprehensiveness, since it has opted for the widest range of measures that encroach, under court supervision, on the individual rights of an individual, to successfully conduct a survey, which would otherwise not be possible to conduct or would be hampered with disproportionate difficulties.

Regarding the material conditions for the application of special evidentiary actions, it is clear that, in the legislation of the countries considered, they are analogous to the assumptions envisaged by the Croatian legislator. Differences emerge in the nuances of the basis for suspicion, as well as in the severity or the catalogue of criminal offenses. Unlike the German and Italian legislators, which provide a uniform catalogue of criminal offenses for all types of special evidentiary actions in respect of which it is possible to order their implementation, the Austrian legislator, on the other hand, requires that it be a "serious" criminal offense, without specifying which, by name, these criminal offenses would be, while it specifically nuances the degree of probability of the commission of a criminal offense, grading it from "initial suspicion", through "ordinary suspicion" to "strong suspicion".

All the legislations of the countries under consideration require, as a formal prerequisite, the existence of a reasoned order of the investigating judge initiated by the state prosecutor's request. Austria, on the contrary, allows the criminal police to conduct apparent investigative measures on their own initiative, except in limited cases where approval from the state prosecutor is required. The German legislator also recognizes the possibility of a self-initiative court order for the implementation of special evidentiary actions, in the form of an urgent court order, but only to a limited extent.

The urgent order to implement special evidentiary actions is known in all the legislations of the observed countries, except Austria. However, in none of the observed comparative legislative systems has the legislator specified the further course of action for the state attorney in situations where the convalidation of the state attorney's order has been omitted, which raises a series of questions. Namely, it is not clear from the law provisions whether the state attorney has the instrument of appealing the court's decision at his disposal, which explicitly leads to the conclusion that the court's decision is final and results in the impossibility of using the results of the undertaken special evidentiary actions as evidence in the proceedings. The Austrian legislator, perhaps precisely for the reason of delegating the authority to the state attorney to independently decide on the application of individual evidentiary actions, has generally omitted the normative regulation of the institute of the urgent order of the state attorney, and, therefore, does not recognize the possibility of subsequent judicial convalidation of the order, at least when it comes to special evidentiary actions.

For all continental-type legislation considered, except Croatian law, the legislator typically lacks a unified approach to the duration of special evidentiary actions. In other words, there is no uniform provision that would have determined the exact duration of special evidentiary actions.

Thus, the German legislator foresees a different duration depending on the particular type of special evidentiary action that is applied. In contrast, the Austrian legislator, for all special investigative measures, failed to specify the exact initial duration of the order, stating only that the measures can be ordered only for the period of time "that is likely to be necessary to achieve their purpose". The Italian legislator somehow offers a unified form. However, with regard to the time limit of the order for taking special evidentiary actions, the legislative provision of Art. 267 of the CPP lacks precision, both with regard to the (initial) duration of the order of the Preliminary Investigation Judge, and with regard to the circumstances under which it is possible, and whether it is even possible, to further extend the order after the expiration of the prescribed deadlines.

It can be concluded that the Croatian legislator has regulated the initial duration of the investigating judge's order, as well as the possibility of its further extension, in the most comprehensive manner. The Croatian legislator, concerning the duration of special evidentiary actions, has a unified approach, regardless of the type of special evidentiary action applied, and provides for more detailed guidelines regarding their further continuation, which make it dependent on the success of the measures in obtaining the results for which they were ordered, the need for their further implementation, i.e., the necessity for achieving the purpose for which they were approved, and the category of criminal offenses, all of which is in accordance with the requirements of the constitutional principle of proportionality.

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KOMPARATIVNA ANALIZA UREĐENJA POSEBNIH DOKAZNIH RADNJI U ODABRANIM ZEMLJAMA KONTINENTALNE PRAVNE TRADICIJE: HRVATSKOJ, NJEMAČKOJ, AUSTRIJI I ITALIJI

Sažetak

Institut posebnih dokaznih radnji plijeni pažnju zbog invazivnosti mjera kojima se zadiru i privremeno ograničavaju ustavna te konvencijska prava građana. S obzirom na to da se radi o relativno zaštićenim pravima građana, čije je ograničenje moguće iz razloga predviđenih zakonom i u mjeri u kojoj zakonodavac to predviđa, nužno je postojanje striktnih materijalnih i formalnih uvjeta za primjenu posebnih dokaznih radnji. U radu se analizira normativno uređenje instituta posebnih dokaznih radnji u odabranim zemljama kontinentalne pravne tradicije: Hrvatskoj, Njemačkoj, Austriji i Italiji. U tom pogledu korištene su znanstvene metode svojstvene pravnim znanostima. Analizirana je relevantna domaća i strana literatura u području posebnih dokaznih radnji, dok je posebna pažnja posvećena normativnom uređenju predmetne materije. Također, napravljena je poredbena studija zakonodavnih rješenja odabranih pravnih sustava kontinentalnoga pravnog kruga, u domeni uređenja instituta posebnih dokaznih radnji. Cilj rada jest analizirati i sustavno izložiti materijalne i formalne aspekte primjene posebnih dokaznih radnju u promatranim zakonodavstvima kako bi se dobio uvid u sadržaj i sistematičnost normativnog uređenja navedenih mjera. Pritom se apostrofiraju zajedničke odrednice te inherentne posebnosti uređenja svakog od promatranih zakonodavstava.

Ključne riječi: posebne dokazne radnje, materijalni uvjeti primjene, formalni uvjeti primjene, obrazloženi nalog suca istrage

КОМПАРАТИВНА АНАЛИЗА НА РЕГУЛАТИВАТА НА ПОСЕБНИ ДОКАЗНИ ДЕЈСТВИЈА ВО ОДРЕДЕНИ ЗЕМЈИ СО КОНТИНЕНТАЛНА ПРАВНА ТРАДИЦИЈА: ХРВАТСКА, ГЕРМАНИЈА, АВСТРИЈА И ИТАЛИЈА

Апстракт

Институтот посебни доказни дејствија привлекува внимание поради инвазивноста на мерките што ги повредуваат и привремено ги ограничуваат уставните и конвенциските права на граѓаните. Со оглед на тоа што станува збор за релативно заштитени права на граѓаните, чие ограничување е можно од причини предвидени со закон и до степен до кој законодавецот го предвидува тоа, неопходно е постоење на строги материјални и формални услови за примена на посебни доказни дејствија. Трудот ја анализира нормативната регулација на институтот посебни доказни дејствија во одбрани земји со континентална правна традиција: Хрватска, Германија, Австрија и Италија. Во овој поглед, користени се научни методи типични за правните науки. Анализирана е релевантна домашна и странска литература од областа на посебните доказни дејствија, а посебно внимание е посветено на нормативното регулирање на предметната материја. Исто така, направена е компаративна студија на законските решенија на одбрани правни системи од континенталниот правен круг, во доменот на регулирање на институтот посебни доказни дејствија. Целта на трудот е да ги анализира и систематски презентира материјалните и формалните аспекти на примената на посебните доказни дејствија во набљудуваните законодавства со цел да се добие увид во содржината и систематичноста на нормативното регулирање на горенаведените мерки. Притоа, се нагласуваат заедничките детерминанти и вродените специфичности на регулирањето на секое од набљудуваните законодавства.

Клучни зборови: посебни доказни дејствија, материјални услови на примена, формални услови на примена, образложена наредба на истражниот судија

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