

POUŽITÍ AGENTA V TRESTNÍM ŘÍZENÍ
THE USE OF AN AGENT WITHIN A CRIMINAL PROCEDURE

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ABSTRACT

This work deals with one of the effective tools for fighting with an organized crime, which is the use of an agent in criminal proceedings according to the § 158e of the Criminal Procedure Code. The use of an agent is one of the operative searching means that are exhaustively defined by procedural law. It is a strongly offensive instrument with very complicated legal regulation, which sometimes (as practically the only one) makes possible to obtain objective evidence directly from the complex environment of conspiratorially organized criminal groups. At the same time, the use of an agent often collides with a high standard of basic human rights guaranteed by national law and by international law as well. Therefore, this issue also requires an examination of its international aspects including the case law of the European Court of Human Rights.

This thesis is divided (*without an introduction and conclusion*) into four major chapters. In these chapters, there are discussed all relevant issues in its entirety, including less common or controversial issues. Within the individual parts, the author is expressing his opinions *de lege ferenda* that should be considered. All of these proposals are then briefly summarized in the final chapter of this thesis.

The first part of the thesis provides the reader with a general definition of the operative searching activity which is dichotomically divided into operative searching means and supporting operative searching means. There is also a comparison with two remaining operative searching means that are allowed by our legal order – namely with the *pretended transfer* and with the *monitoring of persons and things*. The following extensive chapter deals with the use of an agent (so-called *Undercover Agent*) according to the Czech legal system (*de lege lata*). There you can find a lot of topics from the development of legislation and the establishment of the institute of the Undercover Agent to the Criminal Procedure Code, through the impunity of the agent, his coverage and the secrecy of his identity during the court proceedings, to the conditions of his usage in a particular criminal procedure. A specific topic included at the end of this chapter is the legal regulation of the specific institute which is the police informant.

The third big chapter (*the fourth chapter of the thesis*) defines a very important issue of the international cooperation of states during the use of an agent in criminal proceedings. The author reflects the change that was made by the implementation of Directive no. 2014/41/EU on the European Investigation Order in criminal matters which significantly simplified the procedure for judicial cooperation across the states of the European Union while obtaining evidence.

The special fourth part of the submitted thesis deals with the very controversial and complicated question of the admissibility of the use of provocation in the activity of the agent, i.e. the issue of *Agent Provocateur*. Emphasis is placed on the consequences of state provocation. This extensive chapter of the work deals with a huge number of interesting questions. However, solution of these issues is very often difficult, questionable and controversial. Subsequently, the reader can learn not only about the current concept of admissibility of the use of Agent Provocateur in our legal environment but also in selected foreign states. For comparison, the author chose one representative of continental legal culture (the Slovak Republic) and one representative of Anglo-American culture (the USA). In the United States of America, there you can find concepts based on the subjective or objective test theory, as well as the distinction between proactive inadmissible agent's behavior known as "*entrapment*" and admissible behavior known as "*sting operation*". Case law of the European Court of Human Rights is also discussed as well as the case law of national courts. In conclusion, the author introduces a specific topic which is very close to police provocation – *reliability test* designed especially for police officers.

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