



COUNCIL    CONSEIL  
OF EUROPE    DE L'EUROPE

**Economic Crime Division  
Directorate of Co-operation  
Directorate General of Human Rights and Legal Affairs  
December 2008**

**“SUPPORT TO THE ANTI-CORRUPTION STRATEGY OF GEORGIA” (GEPAC)**

**COE PROJECT NO. 2007/DGI/VC/779**

**WORKSHOP FOR LAW ENFORCEMENT AGENTS ON THE USE OF SPECIAL  
INVESTIGATIVE MEANS**

*Prepared by:*

Davor Pesic (Slovenia)  
and  
Gerhard Spiesberger (Germany)

**The views expressed in this document are  
author's own and do not necessarily reflect  
official positions of the Council of Europe**

## **1. Overview**

On 9<sup>th</sup> -10<sup>th</sup> December 2008 an "Expert Workshop on the use of Special Investigative Means was held in Tbilisi. The meeting was initiated within the framework of the GEPAC-Project "Support to the anti-corruption strategy of Georgia.

The Georgian participants, and in particular Mr Genadi Kachlibaia, Senior Prosecutor, provided general information about the current situation and legal framework concerning SIMS and undercover operations in Georgia. The presentations have been outspoken and the discussions very open-minded.

## **2. Participants**

The workshop was moderated by Mr Givi Kutidze, Council of Europe, Ms Marijana Trivunovic, expert from United Kingdom and Ms Tanya Peshovska, GEPAC Project Officer. The short-term experts for the use of SIMS and UC-Operations running the workshop were Senior Police Inspector Davor Pešić (Head of undercover operation unit), Slovenia, and Detective Chief Inspector Gerhard Spiesberger (Head of undercover unit), Baden-Württemberg/Germany. They met representatives of specialised units from the Chief Prosecutor's Office and the Ministry of Interior of Georgia (list of participants is attached).

## **3. Content of the workshop**

Additional to the overview Mr Kachibaia provided information about:

- Notion of the corruption crimes and its main elements
- General description of the most widespread corruption related crimes
- Problems of legal qualification of corruption crimes in the process of investigation

Mr Pesic and Mr Spiesberger presented information referring to:

- Presentation on different types of Special Investigative Means (surveillance, telephone tapping, Bugging inside and outside buildings, GPS, undercover operations, police participation in commission of crime, etc.)
- Establishment of an Undercover Unit
- Preparation and steps of an undercover operation
- Ways of presenting court evidence
- Use of technical equipment
- Security of undercover agents
- Conditions/regulations of undercover operation
- How to select UCA
- UCA Training
- Elaboration of internal regulations and manuals on working processes
- Cross border deployment of UCA and International cooperation in the use of SIMS and undercover operations
- Presenting of the European working group on undercover activities (ECG) with focus on European standards on undercover activities
- Best practices from Slovenia including reforms that Slovenia has undertaken in view of its accession to the EU (including best practices from Germany).

## **4. Summary and recommendations**

It is extremely difficult to include legislative provisions on Special operative-investigative activities in one law given the different structures or bodies that are involved in prevention, detention and prosecution of criminal offences. (Ministry of Interior, Ministry of Defence and Ministry of Finance). Therefore, a new draft of Criminal procedural law of Georgia should include a new measure - Undercover operations. Unfortunately, an English version of that draft was not available, so we can not make any comments on it. Yet, it seems that only Interception of Telecommunication and undercover work will be allowed by State prosecutor, whereas all other Special Investigative Measures (Surveillance, recording of conversation, pseudo purchase) will be approved and used by agencies or services combating certain crime.

Basic operative methods concerning retrieving information and operational activities are usually contained in the basic laws on Police, Secret service, Tax service, Customs, Ministry of Finance.

Only special investigative measures are described in separate laws or in Criminal procedural law. In most European countries they include:

- Secret surveillance;
- Collecting information via telephone or other forms of communication;
- Undercover operations;
- Monitoring of electronic communications using listening and recording devices and the control and protection of evidence on all forms of communication transmitted over the electronic communications network (wire tapping, internet, electronic mail,);
- Control of letters and other parcels;
- Bugging and recording of conversations (in private or public places);
- Pseudo purchase;
- Pseudo bribes;
- Controlled delivery;

European standards require that the implementation of special investigative means be subject to court supervision. Moreover the measures should satisfy the following conditions:

- they should be approved by a prosecutor or investigative judge;
- they should have a time limit
- they should only be used as "ultimo ratio" (when all other (classical) means appear to be unsuccessful, or when there is little or no probability of revealing a crime without the use of SIMs);
- there is a probability or reasonable suspicion that a crime has been committed or is being planned and /or prepared;
- they are used only for criminal offences considered as serious and for which a certain level of punishment applies (e.g. imprisonment for 5 years and more).

We think that there is still no functional group on undercover work with respect to operational bodies that perform professional undercover means. In other European states, these bodies generally work with confidential sources like informants who can also act under some legal systems in undercover operations.

Like many states previously belonging to the former Soviet Union, Georgians have a very good experience in intercepting telecommunications and surveillance, but there is still no clear division between state security agencies and criminal police. We have often pointed out this lack, but there was no sufficient answer given about who is doing what in corruption cases.

Participants have been very interested in practical questions. Both foreign experts gave an overview of the process of the use of Special Investigative Means and undercover operations in Slovenia and Germany. They explained in detail the different steps that are necessary when working with Special Investigative Means.

During the discussion, it was made clear that human rights should not be violated in an operation except when they are in accordance with the European standards for implementing undercover operations, which have been presented.

The discussion further addressed the problem of provocation to commit a crime. Therefore, police officers, who are involved in undercover operations need to pay special attention to additional evidence (wiretapping, use of technical equipment to tape the negotiations) against the defendant because the activity of an undercover agent or an Informant generally is not considered as a sufficient evidence in front of a court.

To improve the present situation in Georgia, especially in the field of undercover operation, a detailed concept should be created outlining further development. In case there is a willingness to establish a separate Police unit, this effort should be supported by the Council of Europe as much as possible. The Council of Europe should also consider the possibility of financing a foreign traineeship for a few Georgian representatives that are suitable candidates for using SIMS.