

MANAGEMENT OF PROCEDURAL ACTIVITIES IN THE FIELD OF CRIMINAL INSTRUCTION REGARDING THE OBTAINING OF TRAFFIC AND LOCATION DATA

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Abstract: *The purpose of this study was to analyze the procedure for authorizing the obtaining of traffic and location data processed by the providers of public electronic communications networks or by the providers of electronic communications services for the public. This work brings to the fore a number of issues regarding the implementation of sentences issued by the judge of rights and freedoms, authorizing the obtaining of traffic and location data processed by electronic communications service providers or by providers of electronic communications services for the public. The study suggests, as well, some concrete suggestions for improving the management of the activity of obtaining traffic and localization data processed by the providers of electronic communications services or by the providers of electronic communications services for the public.*

Key words: *management, traffic data, location data, electronic communications service providers, special surveillance method.*

JEL: *K15, K40*

1. Introduction

In the category of evidence, means of evidence and probative procedures are also provided special methods of supervision or investigation (Chapter IV, Articles 138-153 of the Criminal Procedure Code). One of the special methods of surveillance or investigation is to obtain traffic data and

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location data processed by providers of public electronic communications networks for the public (Article 138 (j) of the Code of Criminal Procedure).

Traffic data means the data processed in order to send a communication or an electronic communications network or to invoice the value of such transactions (Law no. 506/2004, article 2 paragraph 1, letter b, M.Of 1101 / 25.11.2004). Location data means any data processed in an electronic communications network and indicating the geographical location of the user's terminal equipment of an electronic communications service intended for the public (Law no. 506/2004, article 2 paragraph 1, letter c, M.Of 1101 / 25.11.2004).

Communication means any information exchanged or transmitted between a significant number of participants by means of an electronic communications service for the public; does not include information communicated to the public through an electronic communications network as part of an audiovisual program service, provided that no link can be established between the information in question and the identifiable subscriber or user who receives it (Law no. 506/2004, article 2 paragraph 1, letter d, M.Of 1101 / 25.11.2004).

"Public electronic communications networks and their associated infrastructures include terrestrial public networks with fixed or restricted mobility access, terrestrial mobile terrestrial public networks, terrestrial public broadcasting networks and publicly accessible satellite networks for electronic communications services public" (Ciuvaga, D., 2018). "Public electronic communications services include publicly available telephone services, leased line services provided through public electronic communications networks, data transmission services provided through public electronic communications networks, public Internet access services and the service of broadcasting or retransmission of audiovisual programs for the public " (Ciuvaga, D., 2018).

2. The procedure for authorizing the obtaining of traffic and location data processed by the providers of public electronic communications networks or by the providers of electronic communications services for the public

The legal framework is ensured by the provisions of the respective Code of Procedure, Article 138 (j), as amended by Law No 75/2016

published in Mof No 334 / 24.09.2016. Art. 152 of the Criminal Procedure Code amended by Law no. 75/2016 published in the Mof No 334 / 24.09.2016 and the provisions of the Law no. 506/2004 on the processing of personal data and the protection of privacy in the communications sector, updated Article 12 ind 1.

In accordance with the provisions of Article 152 of the Criminal Procedure Code, criminal prosecution bodies may, based on the authorization of the judge of rights and freedoms, request traffic data or location data processed by providers of public electronic communications networks or service providers electronic communications intended for the public, if the following conditions are met cumulatively:

- There should be a reasonable suspicion of the commission of the offenses referred to in Article 139 paragraph 2 of the Criminal Procedure Code, namely the crimes against national security, incriminated in the New Criminal Code and other special laws, the drug trafficking offenses, arms trafficking, acts of terrorism, money laundering, counterfeiting of currency or other values, forgery of electronic payment instruments, offenses committed through computer systems or other electronic means of communication, offenses against property, rape, blackmail, deprivation of liberty, tax evasion, corruption offenses and assimilated to acts of corruption, those committed against the financial interests of the European Union, crimes committed by computer systems or electronic means of communication, but also for all offenses for which the law provides punishment of five or more years of imprisonment, criminal offenses of unfair competition, escape, forgery in documents, violations of the regime of weapons, ammunition, nuclear and explosive materials, offenses related to non-compliance with the provisions on the introduction into the country of waste and residues, offenses concerning the organization and operation of gambling, offenses related to the legal regime of drug precursors, offenses related to operations with products susceptible to psychoactive effects similar to those caused by narcotic or psychotropic substances and products.

- There are reasons or justifiable grounds for believing that the requested data is evidence.

- The data cannot be obtained otherwise, or their obtaining would entail particular difficulties that could harm the ongoing investigation or there is a danger to the safety of persons or property.

- The measure is proportionate to the restraint of fundamental rights and freedoms, given the particularities of the case, the importance of the information or evidence to be obtained or the gravity of the offense" (New Code of Criminal Procedure, article 152).

The judge of rights and freedoms shall pronounce within 48 hours, by reasoned conclusion and the providers of public electronic communications networks and the providers of electronic communications services intended for the public who cooperate with the criminal investigation bodies have the obligation to ensure the secret of the performed operation.

3. Implementation of sentences issued by the judge of rights and freedoms, authorizing the obtaining of traffic and location data processed by electronic communications service providers or by providers of electronic communications services for the public

The sentences issued by the judge of rights and freedoms are enforced by the criminal prosecution bodies. These, in practice, collaborate in the vast majority of cases with the police structure within the Romanian Police that also provide technical support, namely the Central Information Analysis Unit and the electronic communications service providers.

In the matter of traffic and localization data required by National Anticorruption Directorate in ongoing criminal investigations, this structure is obtained through its own technical service in collaboration, of course, with the providers of electronic communications services. The Central Information Analysis Unit has three services in its organizational structure :

- Operational Analysis Service
- Data and Information Analysis Service
- Service Analysis of Open Source Information

In fact, the Central Information Analysis Unit receives the sentences issued the judge of rights and freedoms through which this measure has been authorized in accordance with the provisions of Article 152 of the Criminal Procedure Code, read in conjunction with the provisions of Article 12, indent 1 of Law No 506/2004, updated, the obtaining of traffic data and localization processed by electronic communications service providers or by providers of electronic communications services for the public. The sentence is forwarded to all electronic communications service providers/providers or to providers of publicly available electronic communications services.

After the processing of the requests, the results, the obtained data reaches again to the Central Intelligence Analysis Unit, submitting it to the criminal prosecution body who is leading the ongoing criminal investigation. The criminal investigative body exploits them and can benefit from the support of the specialists within the territorial units of the Central Information Analysis Unit which can draft different types of analyses, corroborating the data obtained with the collected data or those existing in the institutional partners' databases.

4. Suggestions for improving the management of the activity of obtaining traffic and localization data processed by the providers of electronic communications services or by the providers of electronic communications services for the public.

The objective of a public institution is to be at the service of the citizens. A competitive organizational model has to be focused on the values of transparency, effectiveness, responsibility and commitment to the public good (Dragomir, C., 2018, p. 287). These values are common to efficient models of the management of the activity of obtaining traffic and localization data processed by the providers of electronic communications services or by the providers of electronic communications services for the public.

In criminal justice practice, situations that necessitate the urgent obtaining of traffic and location data processed by electronic communications service providers or by providers of publicly available electronic communications services occur frequently. This is not legally possible, as the Criminal Procedure Code does not contain provisions to this effect, unlike the special methods of surveillance or research that consist of technical surveillance, interception of communications or any type of remote communication, access to information systems, video surveillance, audio surveillance, or shooting, locating or tracking by technical means. Within these methods, the prosecutor may authorize, in accordance with the provisions of Article 141 of the Criminal Procedure Code, for a maximum of 48 hours, the technical surveillance measures, provided that the legal conditions provided for in Article 139, paragraphs 1 and 2, are met and are urgent.

The technical supervision measures issued by the prosecutor are thus subject to confirmation by the court.

The four special surveillance or research methods constituting technical surveillance are more intrusive than the special surveillance or research method of obtaining traffic and localization data regarding family or private life.

It is precisely because of this reason that we consider that it is necessary for the law to adopt the legal provision by virtue of which the prosecutor may urgently issue for a period of 48 hours the obtaining of traffic and location data processed by the providers of electronic communications services or by providers of electronic communications services for the public. Providers of electronic communications services have the legal obligation to make them available to criminal prosecution bodies, but not later than 24 hours.

The adoption of this provision is a necessity in the field of criminal instruction, as opposed to the field of national security, where it exists, in accordance with the provisions of Article 19 of the Law no. 51/1991 on national security, which stipulates that the prosecutor may authorize the obtaining of traffic and location data for a maximum of 48 hours, if the delay in finalization would prejudice the purpose of the specific activities. Within 48 hours, the authorization is subject to confirmation by a judge (Volintiru, A.N., 2016). At the same time, we propose to improve the informational flow of rapid transmission, in addition to the sentences issued by the judge of rights and freedoms regarding the authorization of obtaining traffic and location data to the providers of electronic communications services or by the providers of electronic communications services for the public through Central Information Analysis Unit. It is necessary for this structure to have the technical capabilities and the human resources necessary for the fulfillment under optimal conditions of the procedural activities authorized by the judge of rights and liberties.

Conclusions

A special method of surveillance and investigation provided in the Criminal Procedure Code is the obtaining of traffic and localization data processed by the electronic communications service providers or by the providers of electronic communications services for the public. Authorization to obtain these data is made taking into account the provisions of Article 152 of the Code of Criminal Procedure in conjunction with the provisions of Article 12 indent 1 of the updated Act 506/2004 on the

processing of personal data and the protection of privacy in the electronic communications sector. At present, in the field of criminal instruction, the legal possibility of the emergency authorization of the obtaining of traffic and location data is not provided, as opposed to the national security field, where the prosecutor can authorize, motivated as a matter of urgency, their obtaining. By virtue of this recital, the law provides for the provision according to which the prosecutor may urgently issue the authorization to obtain the traffic and location data for a period of 48 hours, a measure subject to confirmation by the judge of rights and liberties, providers of electronic communications services or providers of electronic communications services intended for the public, having the obligation to make them available, but not later than 24 hours. Obtaining traffic and localization data must be done exclusively through collaboration between the prosecutor, the criminal investigation bodies or the Romanian Police specialized personnel with the electronic communications service providers or the providers of electronic communications services for the public.

The bodies with specific attributions in the collection of information in the field of national security should not have any attribution in this respect, having in mind also the decision of the Constitutional Court no. 51/2016, which declared the unconstitutional implementation of the technical surveillance mandates to them. It is important to be aware that, with reference to the provisions of Decision no 51/2016 of the Constitutional Court of Romania, the bodies with specific attributions in the gathering of information can no longer implement the technical supervision mandates, consequently these provisions should apply in the case of obtaining of traffic and location data, the providers of electronic communications services or the providers of publicly available electronic communications services.

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