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**Checking Interceptions and Audio Video Recordings
 by the Court after Referral**

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Abstract: In any event, the prosecutor and the judiciary should pay particular attention to the risk of their falsification, which can be achieved by taking only parts of conversations or communications that took place in the past and are declared to be registered recently, or by removing parts of conversations or communications, or even by the translation or removal of images. This is why the legislature provided an express provision for their verification. Provisions of art. 91⁶ Paragraph 1 Criminal Procedure Code offers the possibility of a technical expertise regarding the originality and continuity of the records, at the prosecutor's request, the parties or ex officio, where there are doubts about the correctness of the registration in whole or in part, especially if not supported by all the evidence. Therefore, audio or video recordings serve themselves as evidence in criminal proceedings, if not appealed or confirmed by technical expertise, if there were doubts about their conformity with reality. In the event that there is lack of expertise from the authenticity of records, they will not be accepted as evidence in solving a criminal case, thus eliminating any probative value of the intercepted conversations and communications in that case, by applying article 64 Par. 2 Criminal Procedure Code.

Keywords: risk of falsification; certification; authenticity

1. Introduction

The institution for certifying the recordings was regulated for attesting the authenticity of the minutes-reports rendering the conversations or communications, to eliminate any possibility of alteration or counterfeiting them. However, there may be doubts about the reality and reliability of a recording, in which the legislature has provided, in art. 91⁶ Paragraph 1 Criminal Procedure Code, the opportunity to submit its technical expertise, at the request of the prosecutor, the parties or ex officio. In this respect, practice shows that the court approve an inquiry on the authenticity of technical and forensic records and wire tapping². This regulation is presented as a posteriori guarantee in making the interception and their transcription in the context in which the expertise is conducted by an independent and impartial authority.

2. Procedural Issues

According to Par. 3 of article 91³ of the Criminal Procedure Code, the minutes-report shall be sent to court, alongside with the registration support, after its notification with judging the respective cause. In the doctrine (Volonciu & Barbu, 2007, p. 158) there were raised certain issues in terms of compliance with this legislation in the European Convention. It was found by the European Court, that

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² High Court of Cassation and Justice, criminal section, *Court order from 16 February 2011*, in record no. 4489/1/2010, unpublished; High Court of Cassation and Justice, criminal section, *Court order from 29 September 2010*, in record no. 3318/1/2008, unpublished; Court of Appeal Iasi, criminal section, *Court order from 28 April 2011*, in record no. 8370/99/2007; Court of Appeal Iasi, criminal section, *Court order from 30 May 2011*, in record no. 236/45/2007, unpublished.

among the guarantees provided by national regulations should be included the care for communicating all the records in their intact form³, and must also be provisions for maintaining complete recordings intact and in order, for inspection the court and defense thereof⁴.

In accordance with article 91³, Paragraph 3 of the Criminal Procedure Code, the original support of the recorded conversations and communications which are intercepted is kept by the prosecution, both in the prosecution stage, and in the court, where the file was sent to court settlement. It is made available to the panel hearing the case, as required (Crișu, 2007, p. 242). In this respect, it is argued in the literature (Volonciu & Barbu, 2007, p. 161) that it is necessary for the court to have direct access to original media of the conversation recorded.

3. Aspects of Practice

Given that current technology allows easy falsification of records, where there are such suspicions, at the prosecutor's request, or the parties or ex officio, the court may order technical expertise of the recordings to verify their the authenticity and continuity. If it is found, after examination, the lack of authenticity of the records or interfering mixes in the text or removal of passages of conversation, they can not be retained in the case and can not be used as evidence (Theodoru, 2007, p. 403). In this respect, the courts have pronounced, holding that "because the defendant challenged both the call content, and how the alleged discussion was transcribed in the minutes/report mentioned above, indicating his name," CG ", in the recorded dialogue, there can be no proof of this transcription efficiency, without a technical expertise to establish the authenticity of the registration and without clearly identifying the voices of the persons registered; only on this can be drawn a transcript of the dialogue "(Supreme Court, Decision no. 2986/27 June 2000).

4. Ways to Challenge the Records

A condition for which records can be challenged is the lack of electronic signature. Thus, the Chairman of the Information and Communication Technology from the Chamber of Deputies appreciated the fact that, if the telephone records have no electronic signature, if used as evidence in proceedings, may be appealed. Thus, the file can be edited so that with the voice that carried the conversation, with the words spoken by one who carried the conversation can be constructed other phrases. This can be avoided by the approval of devices that are used for recordings. The file that is extracted from the telephone conversation must be signed electronically so that it can not be changed⁵.

An original recording may have a real value, unquestionably, only through a survey of authentication that can be achieved only based on the original medium.

It is noted that the current criminal procedure law, as amended by Law no. 356/2006, requires as a guarantee to ensure the reality and authenticity of the intercepts and records, making available to the court of the original intercepts and records presented by the prosecution. So, from this perspective, the legislature knows and distinguishes between two legal concepts: the original support and the copy of the original medium.

There were many cases in the judicial practice⁶ in which the NAD refused to provide the parties, the courts, and media experts, the original intercepts and records; these issues were popular because their

³ European Court of Human Rights, *Kruslin vs. France cause*, Decision of 24 April 1990; *Huvig vs. France cause*, Decision of 24 April 1990; *Venezuela Contreras vs. Spain cause*, Decision of 30 July 1998, www. coe.int.

⁴ European Court of Human Rights, *Prado Bugallo vs. Spain cause*, Decision of 18 February 2003; *Dumitru Popescu vs. Romania cause*, Decision of 26 April 2007, www. coe.int.

⁵ Pambuccian V. - President of Information and Communications Technology Committee of the Chamber of Deputies, in *Audio recordings of criminal cases can not certify the identity voice- person in the absence electronic signatures and may be rejected as evidence in court*, www.luju.ro.

⁶ European Court of Human Rights, *Dolenchi&David vs.N.A.D. cause*, cases in which N.A.D. refuse to provide to courts original recording media relied upon by the criminal investigation body, www. coe.int.

aim was to hide the fact that they were holding the interception equipment, recording and processing records, or even hiding distortion intercept and records (method of collages), for the purposes of judicial work of fabrications.

There have been expressed in the literature (Ghita, 2010) that, the absence of original media intercepts and records cited as evidence in a case, and refusal to allow the access of the parties and the courts to the original media, while the original media is a requirement of mandatory legal condition of validity of the interceptions and recordings presented as evidence, determine the absolute nullity of interceptions and recordings.

In practice⁷, rules of evidence were removed from the transcript of the minutes-reports of telephone conversations intercepted and recorded, for the defendants had been violated the right to privacy as guaranteed by Art. 8, paragraph 1 of the European Convention on Human Rights, not being fulfilled the requirements of Art. 8, paragraph 2 of the Convention, the court finding it impossible to perform the examination.

5. Technical Expertise of Records

Currently, the control of the recording reliability is for the National Institute of Forensics Expertise, acting under the authority of the Ministry of Justice and whose experts have the quality of civil servants, being completely independent to the competent authorities in carrying out interceptions and transcripts of recorded conversations.

The voice and speech expertise involves authentication of audio and audio-video recordings and it is performed only on the original records. Within this it is checked whether records were made simultaneously with acoustic-video events that they contain with technical equipment and the method adopted by the party that produced that. In the absence of technical equipment there can be argued that expertise can not be done.

We highlight the fact that, it is now possible to expertise the sound traces to establish the identity of the person from which they are emanated, by analogy with the comparing model (Tulbure, 2006). Thus, another objective of the expertise may be to identify people by voice and speech by comparing a voice in the dispute with the voice recording of a suspect (for comparison), recorded under similar conditions (same technical equipment, the same transmission system etc.) or improve the quality of records. It is performed to increase the intelligibility of the records by reducing or eliminating some types of noise.

At the same time, the court may allow photo and video expertise. Thus, on a photo or video, the objectives of the expertise performed at the National Institute of Forensics Expertise are: the authenticity of photographic images or video - it is check if the record (photo or video) remained unaltered from the time of its shooting, if it was performed with the equipment shown and the method mentioned by who presented the registration.

According to the National Institute of Forensics Expertise, check control means to see if something is untrue, and to determine the authenticity involves determining whether something is consistent with truth. It is obvious that the synonymy of the two terms involves technical expertise in such cases and not the criminal one.

According to international standards such as the Audio Engineering Society (AES27-1996/r2007) authentic recording means "a sound recording made simultaneously with the events alleged to be true, completely and continuously performed by the method which was mentioned by the party who produced it, and was not subject to maneuvers of alteration, addition, deletion or editing.

⁷ Neamt Tribunal, criminal section, *Criminal sentence no. 116/P of 9 June 2010*, unpublished.

6. Conclusions

In the circumstances in which the expert findings indicate that the records are not authentic, some courts have held that although "the defendants recognize their voices on tape, the court shall not consider the evidence relevant, consisting of an audio recording which is not authentic, as long as a such a registration does not meet the following requirements: to be performed simultaneously with acoustic events contained on this and not be a copy, not to contain any interventions (deletions, insertions, intercalations of words, phrases or other counterfeit), to have been performed with technical equipment presented by those who showed the record"(Bucharest Tribunal, 1st criminal section, Criminal sentence no. 373/29 March 2006).

Related to the fact that, because of the lack of authenticity, the court removed such registration from evidence, the National Anticorruption Department affirms that, at present, all the NICE expertise refer to AES 27-1996 (r2007) standards, respectively to AES 43-2000, developed by the Audio Engineering Society (Prosecutor of the High Court of Cassation and Justice, National Anticorruption Department, Conclusions about the facts of the case, in record no. 236/45/2007).

According to the 3.2 of AES 27-1996 definition, the notion of authentic audio recording, consists in a recording taking place simultaneously with the recorded events, performed with the device indicated by the part and shows no inexplicable alterations or erasures. From this point of view, of the cumulative performance of the three conditions given above, the definition is perhaps valid only for sound recordings on magnetic tape (it may play a support role of authentic records).

The National Anticorruption Department considers that when digital support is used, the definition is devoid of any effect, as the terms "original" and "copy" are purely literary, or at least chronologically, as in terms of integrity the files so created, between the first and the following (by the trivial "copy-paste ") there is no difference in content.

We do not share this view, because it is essential to finding the truth, as audio recordings to be original, not mere copies. According to doctrine and practice, but also under art. 91¹ - 91⁶ Criminal Procedure Code, if the recording is not authentic, it can not be accepted as evidence. (Petre & Grigoras, 2010).

This rule is contradicted by the conclusions of the above mentioned institution, even if there were no differences in content between the copy and the original, it is created a doubt about the existence of optical media originals, which flagrantly contravenes the provisions contained in Art. 91³ Par. 3 Criminal Procedure Code, which claim to be original media, which is kept at the prosecution in a special place in a sealed envelope and will be provided to the court upon request.

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