

FIGHTING ORGANIZED CRIME AND RIGHT TO FAIR TRIAL UNDER THE ARTICLE 6 PART 1 OF THE EUROPEAN CONVENTION OF HUMAN RIGHTS

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KOVA SU ORGANIZUOTU NUSIKALSTAMUMU IR TEISĖ Į TEISINGĄ TEISMĄ PAGAL EUROPOS ŽMOGAUS TEISIŲ KONVENCIJOS 6 STRAIPSNIO 1 DALĮ

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THE SUMMARY (THESES)

Today the organised crime does not limit within one country's boundaries. Thus, in order to fight it, the use of special investigative methods that would be the most effective, is inevitably used. On one hand, by the use of such special investigative methods it is aimed to protect the rights and fundamental freedoms of persons and secure society. However, on the other hand, the use of such investigative methods may violate the rights of persons with regard to whom such methods are applied. In the context of different international organisations such as the Council of Europe, United Nations, European Union a number of conventions are adopted that allow special investigative methods, including undercover agents, wiretapping, interception of telecommunications and access to computer systems and etc. that would facilitate to gather evidence in such sphere. It should be noticed, though, that all the members of the Council of Europe are the member states of the Convention for the Protection of Human Rights and Fundamentals Freedoms that must obey and fulfil the obligations under this international document, i.e. protecting one of the most important conventional right – the right to a fair trial established in Article 6 of the above-mentioned Convention. As the case-law of the European Court on Human Rights proves the right to a fair trial is very often violated when the undercover agents are used. It should be noticed that the use of special investigative methods

cannot in itself violate the right to a fair trial under this Convention, however when applying the undercover agents there always remains risk that persons with respect to whom such undercover agents are used will be incited to commit criminal acts. Thus their use must always have clear limits and in no way it cannot violate the rights of the person with regard to whom undercover agents were used. The case-law of the European Court on Human Rights proves that the most problematic issues with regard to the use of undercover agents are the following: the limits of undercover agents' activity, the use of evidence obtained using undercover agents and the protection of the principles of equality of arms and adversarial process. Therefore today, on one hand the member-states of Council of Europe must be especially careful when using undercover agents; on the other hand, the developing standards of the European Court on Human Rights in this field prove that it becomes more complicated to apply such secret investigative technique in order to fight all types of criminal offences, from the most straightforward to the most complex – organised crime.

The author has prepared and published the research article based on the presentation.

See: http://www.mruni.eu/lt/mokslo_darbai/jurisprudencija/archyvas/dwn.php?id=213050.