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CRIMINAL ANALYSIS – AN EFFECTIVE TOOL FOR COMBATTING ORGANISED ECONOMIC CRIME

The organised crime activity in Poland started developing most dynamically after 1989, during the political transformation. It would be, however, a great simplification to say that this time was the beginning of organised crime in Poland. In the territory of our country, criminal groups with a high degree of organisation had operated successfully long before the indicated period.

In the interwar period in Poland, there were groups of a different nature, e.g. in Vilnius, there was an association of professional criminals, whose main specialisation was theft, and extortion, but also crimes that required a considerable amount of sources and resources from the members of the groups – among others, cases of arms smuggling (the eastern borders of Poland) were documented. This type of crime also took place on the Polish-German border (Silesia and Greater Poland) and on the border with the Free City of Gdańsk, but to a slightly different extent³.

It was at that time that organised crime activity aimed at maximising its profits by reducing excessive risks and taking maximum advantage of the weaknesses of the contemporary public administration. Such an example is certainly the so-called Żyrardowski scandal. In 1923, the then Minister for Trade and Industry, Władysław Kucharski, signed a contract with the French consortium Comptoir de l'Industrie Cotonnière for the sale of a block of shares in the Żyrardów flax factory, the owner of which

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³ Kozdra K, *Rozwój przestępczości zorganizowanej w Polsce. Zeszyty naukowe PWSZ w Płocku*, 2017, Vol. 26, pp. 43–56.

was the State Treasury. The signed agreement was extremely unprofitable for the Polish State, and the factory, which was launched after the war with an investment of 2.5 million Swiss francs, was sold for about CHF 500,000, which accounted for 17.3% of the total government sum incurred. In order to finance the transaction, the French took out a non-valued loan at a Polish bank with the consent of the Ministry of Industry and Trade. The debt was then repaid, in accordance with an earlier agreement, in the 'devalued' Polish currency called the 'mark'. The consortium gave a total of 18,810 Swiss francs, thus exposing the State Treasury to a loss of over 2 million francs, while the Postal Savings Bank lost more than 400,000 francs. The French became owners of a very good branded company for only 0.7% of its value. In a short period of time, having successfully taken their profits abroad, they brought the company to the brink of bankruptcy⁴. Even greater losses for the state treasury were incurred due to the so-called match-making scandal, consisting in the sale of 75% of the Polish match-making monopoly to the Swedish consortium formed by Ivan Kruger⁵. In such a reality, everyone understood that in the areas of the former Russian partition, corruption was harmful, widespread, and deeply rooted.

The Second World War hindered organised crime only temporarily. Immediately after the war finished, criminal groups formed again, however, their first structure was not of a hierarchical nature. In the fifties of the twentieth century, small groups of pickpockets and burglars prevailed. Their activity was most noticeable in Lower Silesia⁶. Within the following years, the development of crimes such as robberies, smuggling, extortion, and economic crime based on the continuous shortage of basic food and economic products was noticeable.

The period of social, economic, and political changes undoubtedly favoured the development of the grey economy, and the emergence of very well organised criminal groups with strong hierarchies. In the area of organised crime, car theft, both at home and abroad (mainly from Germany), and extorting ransoms from businesspeople developed most rapidly.

At that time, criminal activity was drastically brutalised. The functioning of such groups as 'Pruszków', 'Wołomin', and 'Łódzka ośmiornica', apart from activities related to the illegal trade of tobacco and spirit products, involved extortion and robbery. It was natural competition that led to gang warfare and fights for influence in different areas. It was then that the bosses and top gang members of particular groups were brutally eliminated (homicides of Nikoś, Szwarceneger, Kiełbasa, Wariat, Junior,

⁴ Bil J, *Przestępczość zorganizowana w ujęciu historycznym oraz jej ewaluacja. Kultura Bezpieczeństwa. Nauka-Praktyka-Refleksje*, 2015, No. 20, p. 102.

⁵ Jasiński W, Mądrzejowski W, Wiciak K (Eds), *Przestępczość zorganizowana w Polsce po 1990 roku, kształtowanie zagrożeń, [in:] Przestępczość Zorganizowana Fenomen, Współczesne zagrożenia, Zwalczenie, Ujęcie praktyczne*. Szczytno, 2013.

⁶ See: Bożyczko Z, *Kradzież kieszonkowa i jej sprawca*. Warsaw, 1962.

Malarz, Klepak, and Pershing)⁷. Such radical measures were a serious threat not only to the criminals, but also to all citizens, therefore the main emphasis was placed on fighting criminal terror, and eliminating this threat.

With the market economy emerging at that time, new forms of organised crime on a scale unknown in Poland at that time, were also formed through natural processes⁸. In addition to the production and trade of alcohol, they included ownership transformations and banking systems (e.g. FOZZ and 'Art B' scandals).

The current criminal activity of organised groups in Poland is often of an international nature. Polish criminal groups have expanded their activities not only to Western European countries (e.g. Great Britain, Germany, Spain, and Italy) but also to the United States. The largest field of activity of organised criminal groups is economic crime, which causes significant losses to the State Treasury⁹. These crimes are primarily related to the reduction of state budget revenues, obtaining undue tax refunds, and the fraudulent use of European Union or government subsidies. In addition to the already classic forms of such crime consisting in the extortion of value added tax and excise tax, understatement of public law dues, and also crimes on the capital and insurance markets, we also deal with offences aimed at irregularities related to obtaining public contracts. In order to enable them to carry out their criminal activities, organised crime groups benefit from corrupt practices and money laundering offences, which are designed to put the proceeds of crime into legal circulation.

It should be noted that currently in Poland, there are almost twice as many organised crime groups of an economic nature as criminal ones.¹⁰ The value of the grey market in Poland is estimated at about 13% of the Gross Domestic Product (in 2017, the grey market may have reached about 76 billion dollars). Despite the efforts of the Finance Ministry and the police, its value is not decreasing. The grey zone is an economic phenomenon which accompanies all business activities, and it is not possible to eliminate it completely. We can only try to reduce its growth, and make sure that its most dangerous part does not develop¹¹.

Criminal organisations are making their activities more and more professional in the sphere of economic crime, which effectively makes it difficult for law enforcement authorities to work. The frequent linking of illegal activities to legitimate business structures is the most difficult factor

⁷ See: Mądrzejowski W, *Przestępczość zorganizowana, system zwalczania*. Warsaw, 2015.

⁸ Gabriel-Węglowski M, *Koncepcja usprawnienia instytucjonalnego prokuratury w zwalczaniu przestępczości zorganizowanej*. *Prokuratura i Prawo*, 2011, Vol. 4, p. 92.

⁹ Bil J, *Przestępczość...*, *op. cit.*

¹⁰ 2018 Statistical Report. *Electronic source*: <http://www.cbasp.policja.pl/> accessed: 21.01.2020.

¹¹ Raport Przeciwdziałanie Szarej Strefie w Polsce 2018/19. *Electronic source*: <https://ungc.org.pl> accessed: 21.01.2020.

in preventing and combatting economic crime. It creates difficulties in determining the degree of perpetrators' involvement, the extent and nature of their participation in criminal activities, and the identification of property components derived from crime¹².

Sometimes offenders begin to use techniques such as encrypting communication, and using online casinos and online financial services¹³. Currently, the police, when carrying out tasks related to the detection of economic crimes, are determined to obtain as much data as possible. In recent years, there has been a very large increase in information processed in the detection process, which has become possible to obtain because of the widespread use of computers. The most striking example is the case of Amber Gold, in which the following have been established: 250 bank accounts and several thousand financial flows related to thereof, electronic data carriers with a capacity of 7 terabytes¹⁴, financial and accounting documents secured in the investigation, especially those concerning deposits and loans, almost 18,000 victims, and losses of over PLN 851 million¹⁵.

This is not the only example of the serious complexity of economic crime cases. In the Economic Crime Department at the Regional Police Headquarters in Gdańsk, there are currently about 80 preparatory proceedings of a high degree of complexity. According to the deputy head of the department, more than 70 of them require criminal analysis¹⁶. Similarly, there are 20 such proceedings in the Department of Combatting Organised Economic Crime and Corruption at the Police Central Bureau of Investigation in Gdańsk. Almost all of them must be dealt with by a police criminal analysis expert¹⁷.

The material collected, either in the covert investigation or in the pre-trial proceedings, will only be relevant to the pre-trial proceedings if it is properly processed and analysed in the course of criminal analysis, as an element which allows for combining numerous apparently unrelated information. Criminal analysis now appears to be the most important tool to detect the relevant circumstances of a case, and then to identify the perpetrators of economic crimes.

¹² Bil J, *Przestępczość...*, *op. cit.*

¹³ See more: Filipkowski W, Technologiczne aspekty walki z przestępczością zorganizowaną, [in:] Kasprzak J, Młodziejowski B (Eds), *Wybrane problemy procesu karnego i kryminalistyki*. Olsztyn, 2010, p. 269.

¹⁴ See: Katka K, Nowe życie Amber Gold. *Gazeta Wyborcza* of 2 October, 2012, p. 5.

¹⁵ *Electronic source*: <http://biznes.newsweek.pl/sledztwo-ws-amber-gold-zmierza-do-konca-newsweek-pl,artykuly,345541,1.html>, accessed: 21.01.2020.

¹⁶ In-depth interview with the deputy head of the Economic Crime Department at the Regional Police Headquarters in Gdańsk of 14 January 2020.

¹⁷ In-depth interview with the head of the Department of Organised Economic Crime and Corruption at the Police Central Bureau of Investigation in Gdańsk of 15 January 2020.

The analysis as such has long been known in investigative work. It appeared in the 1960s in the United States. It was one of the methods supporting institutions dealing with the fight against organised crime in recognising the extent of the phenomenon, the areas covered by the mafia, the ways in which crimes are committed, and how the proceeds obtained through crime are introduced into legal circulation. It facilitated the development of structures of organised crime groups and their members. In Poland, it was used as one of the techniques of creative thinking in the 1970s¹⁸. The search for relationships between different events and people has been known since ancient times. Criminal analysis is understood today primarily as a scientifically developed standardisation of analytical techniques, and the use of modern methods to present results in a visual way.

Prof. Jan Widacki¹⁹, in his accurate definition, describes criminal analysis as establishing relationships between data describing criminal activities for practical use by law enforcement agencies and courts. In fact, criminal analysis is based on searching for relations between events, subjects, and objects, and determining the type and strength of these relations. It is an inseparable part of the criminal intelligence cycle, i.e. the process of obtaining, assessing, and providing information in a structured form²⁰.

In the relevant literature, there are also other definitions of the concept of criminal analysis²¹, however, the one adopted in 1992 by Interpol is worth noting. It shows that the term 'criminal analysis' refers to activities that aim to establish and maintain a link between the criminal intelligence obtained and other data, potentially related to it, to be later used by law enforcement agencies and the judiciary²².

¹⁸ Czerwiński W, Rola technik twórczego myślenia w pracy śledczej. *Problemy Kryminalistyki*, 1979, No. 138.

¹⁹ J. Widacki, Kryminalistyka. Warsaw, 2012, p. 72.

²⁰ *Electronic source*: <http://gazetasledcza.pl/2018/09/nieoceniona-rola-analitikow-kryminalnych>, accessed: 21.01.2020.

²¹ See: Konieczny J, Wersja śledcza, modus operandi i analiza kryminalna, [in:] Widacki J (Ed.), Kryminalistyka. Warsaw, 2002, p. 72; Chlebowski P, Filipkowski W, Analiza kryminalna. Aspekty kryminalistyczne i prawnodowodowe. Warsaw, 2011, p. 33; Tusiński H, Bronicki M, Wywiad kryminalny jako kierunek zwiększenia efektywności Policji w zdobywaniu, gromadzeniu i wykorzystaniu informacji, [in:] Pływaczewski E.W (Ed.), Przepępczość zorganizowana. Świadek koronny, terroryzm w ujęciu praktycznym. Warsaw, 2005, p. 659; Gruza E, Goc M, Moszczyński J, Kryminalistyka – czyli rzecz o metodach śledczych. Warsaw, 2008, p. 71; Krajniak O, Zastosowanie analizy kryminalnej w zwalczaniu przepępczości zorganizowanej, [in:] Wiliński P (Ed.), Prawo wobec wyzwań współczesności. Poznań, 2005, p. 4; Ignaczak W, Wybrane zagadnienia analizy kryminalnej. Szczytno, 2005, p. 8; Wójcik J.W, Przeciwdziałanie przepępczości zorganizowanej. Zagadnienia prawne, kryminologiczne i kryminalistyczne. Warsaw, 2011, p. 449; Ibek A, Teoretyczne podstawy analizy kryminalnej, [in:] Konieczny J (Ed.), Analiza informacji w służbach policyjnych i specjalnych. Warsaw, 2012, p. 24.

²² Kobylas M, Hausman M. Analiza kryminalna jako narzędzie wspomagające zwalczanie przepępczości zorganizowanej. *Policja. Kwartalnik Kadry Kierowniczej Policji*, 2006, No. 3, p. 34.

Among the forms of criminal analysis, one can distinguish strategic and operational analysis. Strategic analysis is concerned with forecasting the development of crime, and defines strategies and methods of combating it in a certain time perspective. Thanks to this, we can find out what threats exist, and who they are likely to be posed by in a given time period, and in a given territory, and take preventive measures. Strategic analysis not only examines the phenomenon of crime (analysis of methods), but also develops a general profile (mental, sociological features, material status) of potential perpetrators. Strategic analysis is based on statistical data, economic forecasts, legislative perspectives, and the entire scholarly achievements of criminologists. A strategic analysis will also develop an effective methodology for conducting investigations in particular categories of crimes.

On the other hand, operational analysis deals with the examination of specific cases and specific people. Most often, it concerns serial crimes, which can and should be compared with each other, and the relationships between them should be established. Its subject may also be one specific case with a highly complex factual state of affairs. In the case of criminal groups, criminal analysis methods establish relations between already-known perpetrators, and especially their role in the group, and in the case of perpetrators not yet detected, on the basis of knowledge in the field of victimology, forensics, psychology and psychiatry, and data already collected in the case. These methods allow the development of a 'special profile' of an unknown perpetrator (psychological profiling). In the operational analysis, it is also possible to examine the accuracy of the applied investigative methods in a specific case, reveal errors, and initiate their removal. In this way, e.g. versions are introduced into the plan of investigation, the need for which has not been noticed before, or the inspection of places where the perpetrator, in all probability, must have left some traces. Sometimes, the analytical techniques make it possible to determine which of the witnesses is making false statements, and which documents are falsified.

Charts and conclusions are the result of criminal analysts' work. Typical charts include: a chart of connections within a criminal group, a chart of financial flows, a chart of events, a chart of crime analysis, and a chart of phone calls. Such visualisations facilitate, beyond any doubt, understanding the essence of the phenomenon, and the stages of the event. As a result, in many cases, it helps to achieve the objectives of criminal proceedings²³.

From the point of view of police officers carrying out tasks directly related to combatting organised economic crime and corruption, the most important type of analysis is primarily operational analysis, which is used both during operational activities and later in preparatory proceedings.

Criminal analysis becomes absolutely necessary when traditional methods are insufficient due to a large amount of data obtained. In such a situation, in order to take effective measures, it is necessary to employ

²³ *Electronic source:* <http://www.zielona-gora.po.gov.pl>, accessed: 21.02.2020.

an analyst who – by answering the so-called seven golden questions: who, what, where, by means of what, why, how, and when²⁴ – will structure the collected material, so that it is possible to draw new conclusions, outline a new course of action, or make the assumed versions of events plausible²⁵.

There is a separate Bureau of Intelligence and Criminal Information in the Police, which administers the data collected in the information systems, and assists police and non-police entities in combatting crime by making criminal information available from the collected resources.

The tasks of the Bureau of Intelligence and Criminal Information include in particular:

- providing information to police and non-police entities on the content of the National System of Police Information;
- enabling the use of information systems by criminal police and the criminal investigation department;
- carrying out covert criminal analyses for the purpose of proceedings in cases of national coverage or of particular complexity;
- developing strategic criminal analyses of national and international crime threats;
- coordinating recruitment activities;
- supporting the operations of the criminal intelligence teams of the Regional (Metropolitan) Police Headquarters;
- providing information according to the provisions of the Act of 7 September 2007 on the Card of the Polish Citizen (DzU No. 180, item 1280, as amended);
- tasks related to visa application procedures under the provisions of the Act of 13 June 2003 on Foreigners (DzU of 2011, No. 264, item 1573, as amended);
- performing tasks of the central technical authority of the National IT System referred to in the Act of 24 August 2007 on the Participation of the Republic of Poland in the Schengen Information System and the Visa Information System, with regard to data administration;
- performing the tasks of the central access point referred to in Article 7 section 2 item 1 of the Act of 24 August 2007 on the Participation of the Republic of Poland in the Schengen Information System and the Visa Information System, and the National Criminal Information Centre referred to in Article 5 of the Act of 6 July 2001 on Collection, Processing and Transfer of Criminal Information (DzU of 2015, item 1930);
- performing tasks related to defence readiness of the Police.

Moreover, criminal analysis units operate in the Provincial Police Headquarters of the Criminal Intelligence Departments. The Police Central

²⁴ Girdwoyń P, *Wersje kryminalistyczne, o wykrywaniu przestępstw*. Warsaw, 2001, p. 173.

²⁵ Gruza E, Goc M, Moszczyński J, *Kryminalistyka – czyli rzecz o metodach śledczych*. Warsaw, 2008, p. 71.

Bureau of Investigation has a separate Criminal Intelligence Department within its structures, reporting directly to one of the Deputy Commanders of the Police Central Bureau of Investigation²⁶.

The use of criminal analysis in the Police is subject to the provisions of Order No. 1012 of the Commander-in-Chief of the Police of 23 September 2004 on the use of criminal analysis by the Police²⁷, and Decision No. 192 of the Commander-in-Chief of the Police of 28 May 2004 on establishing and maintaining a central register of information for the purpose of criminal analysis.

These provisions stipulate that criminal analysis shall be used in highly complex cases of a wide territorial scope and when the *modus operandi* indicates a high degree of specialisation in criminal activity, or the case is likely to evolve.

The tasks of a criminal analyst include, in particular:

- 1) preparing criminal analyses;
- 2) supporting the detection process by using specialised analytical tools;
- 3) cooperation with the investigating officer conducting the preparatory proceedings or covert investigation in the process of identifying the source information for the analysis;
- 4) determining the course of work in the analysed cases;
- 5) involvement in investigation teams and task forces to prepare the appointed analysis²⁸.

With regard to operational analysis, the following forms of analysis are specified²⁹:

- analysis of a crime and an incident – this is performed with reference to specific persons and incidents, therefore the subject of this type of analysis is mainly complex cases. It is intended to chronologically reconstruct the course of a given crime or an incident in order to determine in detail the circumstances under which it was committed, and on this basis to detect and capture the perpetrator;
- analysis of the special profile of the offender – on the basis of materials and data collected in the case, mainly concerning the circumstances of the offender's activity, the crime committed, traces left behind, and on the basis of forensics, victimology, psychology, and psychiatry, analytical methods may allow conclusions to be drawn about the individual psychophysical characteristics of the offender, and on this basis, a 'special profile' of the offender of a specific crime is developed. Analyses of this kind are carried out in cooperation with specialists in the field of psychology and forensic science;

²⁶ *Electronic source:* <http://www.policja.pl/>, accessed: 23.01.2020.

²⁷ Dz. Urz. KGP 2004 No. 20, item 124.

²⁸ Zarządzenia nr 1012 komendanta głównego Policji z 23 września 2004 w sprawie stosowania przez Policję analizy kryminalnej, art. 3 i 5. (Order No. 1012 of the Police Commander-in-Chief of 23 September 2004 on the use of criminal analysis by the Police, Articles 3 and 5).

²⁹ Czarnecki S, *Analiza kryminalna – narzędzie pracy Policji. Prokurator*, 2007, No. 1, pp. 26–27.

- analysis of conducting a case by law enforcement authorities – the criminal analysis is to verify the implementation and use of specific methods and forms of investigative work, indicating the relevance and accuracy of their implementation. It also helps to establish whether the particular activities have achieved their initial goal and, as a result, whether appropriate conclusions have been drawn in connection with their implementation;
- analysis of criminal groups – the most important aim of this form of criminal analysis is to determine the pattern and structure of an organised criminal group, the links and relations between members of the group and the external environment, as well as their role and the tasks they perform within the criminal activity. It is also important to determine additional circumstances related to the proper functioning of a given structure, especially the profile and area of criminal activity or sources of financing;
- comparative analysis of cases – this type of analysis is used for similar crimes, which can be compared due to similar facts, analysing not only the relations, similarities or dependencies between them, but also the differences. An analysis conducted in this way provides the opportunity to associate seemingly unrelated crimes with one or more perpetrators, and then attribute responsibility for committing the crimes to the relevant criminal³⁰.

For the types of forensic analysis presented, specific techniques may be used³¹, among which one should indicate:

- analysis of lists or history of telephone calls combined with identification of the users of particular MSISDN subscriber numbers, SIM cards or telephone numbers (verification by the IMEI);
- Base Transceiver Station (BTS) logging analysis³²;
- analysis of personal connections and social networks, e.g. Nasza Klasa, Facebook, Grono, GoldenLine, MySpace, Instagram, Twitter, and Internet communicator identifiers: Skype, GG, WhatsApp, and Viber³³.
- analysis of incidents³⁴;
- analysis of mechanisms of criminal activity (the so-called *modus operandi*).

An example of a *modus operandi* analysis used in this way may be the detection activities of the Police related mainly to combating organised

³⁰ See more: Kołdys M, *Analiza kryminalna – definicja, typologia, zastosowanie. Wojskowy Przegląd Prawniczy*. Warsaw, 2016, Vol. 1/277.

³¹ Krajniak O, *Zorganizowane grupy przestępcze. Studium kryminalistyczne*. Warsaw, 2011, p. 320.

³² See more: Czarnecki S, *Analiza kryminalna...*, p. 26.

³³ See more: Filipkowski W, *Wykorzystywanie otwartych źródeł informacji. Wyniki badań ankietowych*, [in:] Filipkowski W, Mądrzejowski W (Eds), *Biały wywiad. Otwarte źródła informacji – wokół teorii i praktyki*. Warsaw, 2012.

³⁴ Chlebowicz P, Filipkowski W, *Analiza kryminalna. Aspekty kryminalistyczne...*, p. 137.

economic crime, e.g. the use of circular mechanisms in committing crimes related to extortion of undue VAT refunds³⁵;

- analysis of financial flows and capital ties, involving restoring of the so-called accounting trail, establishing the identity and role of natural and legal persons involved in criminal activity, determining the amount of property values derived from crime, and determining the place of their storage. Most often, the analysis of financial flows is based on the analysis of bank account histories. Within such an analysis, particular attention is paid to the following elements: the parties to a financial operation, the value of the transaction, the title of the financial operation and the time of its execution, and the place and circumstances of the transaction³⁶;
- multidisciplinary analyses using the various analytical techniques and methods described above.

Apparently, the various forms and techniques of criminal analysis offer a number of possibilities. A list of times when this tool was used by police officers mainly to illustrate lists of mobile or land-line phone calls would go forever.

Along with the progressing development of technology, multi-generational analyses and financial flow analyses play a major role. Nowadays, economic crime is based on online banking and financial services at a distance. The number of transactions carried out by electronic means is growing day by day, and the threat posed by organised crime is also growing. It becomes natural to use the presented types of analysis, and its performance is already one of the basic activities of law enforcement agencies³⁷.

Nevertheless, the reality in the Polish Police is different at the moment. Too few analysts in comparison with the number of complicated cases conducted by the Police have forced, in some measure, policemen to use the available software, e.g. a link to conduct simple billing analyses. However, the mass transfer of remote communication to the Internet (instant messengers) has made this technique practically useless in cases involving professionally organised criminal groups.

The possibilities offered by the amendments to the Police Act³⁸ connected with conducting operational control in relation to data contained in IT data carriers, telecommunication terminal equipment, and IT and

³⁵ See more: Konieczny J.J, Wersja śledcza, modus operandi i analiza kryminalna, p. 71 and Wójcik J.W, Kryminologia. Współczesne aspekty. Warsaw, 2014, pp. 40–43.

³⁶ See more: Dreżewski R, Filipkowski W, Sepielak J, Analiza przepływów finansowych, [in:] Nawarecki E, Dobrowolski G, Kisiel-Dorohinicki M, (Eds), Metody sztucznej inteligencji w działaniach na rzecz bezpieczeństwa. Krakow, 2009, p. 84; Wójcik J.W, Przeciwdziałanie praniu pieniędzy. Krakow, 2004, pp. 261 ff.

³⁷ Compare: Kołdys M, Analiza przepływów finansowych jako szczególna technika analizy kryminalnej. Praktyczne wykorzystanie. *Przegląd Bezpieczeństwa Wewnętrznego*, 13/15, p. 207.

³⁸ Article 19 of the Police Act of 6 April 1990 (DzU of 1990, No. 30, item 179 as amended).

ICT systems are so far unattainable for the police and cannot become a source of data for criminal analysts³⁹. It should be emphasised here that when performing a criminal analysis, an analyst does not obtain new data or gather evidence, their task is to be able to look at the case from a different perspective.

The division of criminal analysis into operational and strategic analyses seems to be incomplete, as it is difficult to find the concept of process analysis in the literature⁴⁰. The lack of such a distinction seems unjustified and mistaken, as analyses made at the stage of preparatory proceedings, ordered by the prosecutor, or in court proceedings ordered by a judge, may have unquestionable evidential value⁴¹.

Criminal analysis should be qualified as an act of evidence. The factual conclusions made by a criminal analyst, according to the classification of evidence adopted for the purposes of the criminal trial, are so-called indirect circumstantial evidence. Indirect (circumstantial) evidence is the result of an intellectual process (of a certain action) leading to a declaration of truthfulness of the main fact by deducing from circumstances, facts not directly related to the prohibited act. As Romuald Kmiecik correctly points out, circumstantial evidence is part of the evidentiary foundation and thus allows important facts to be established⁴², i.e. the so-called main fact in the criminal trial. Despite the indirect nature of circumstantial evidence, it should not be underestimated. It is circumstantial evidence that allows the procedural authorities to assume the existence of a specific factual situation as true as long as the opposite circumstances do not occur.

The results of a criminal analysis, which include certain factual findings, may constitute both a factual basis for further operational and exploratory activities, as well as a basis for a conclusive decision on the subject of a criminal trial. The use of criminal analysis as evidence is possible in the rule of law only if the following conditions are met:

- 1) circumstantial evidence must constitute a chain of evidence which clearly shows the existence of the main fact,

³⁹ See more: Wojtalewicz M, *Praktyczne aspekty stosowania i wykorzystania kontroli operacyjnej oraz kontrolowanego wręczenia korzyści majątkowej w zwalczaniu przestępczości korupcyjnej. Policja Kwartalnik Kadry Kierowniczej Policji*, 2017, Vol. 1.

⁴⁰ According to S, Czarnecki it is at least a misunderstanding to treat operational analysis as a tool used only in operational matters. The methods and techniques used in an operational analysis are the same for both areas, both overt and covert, and the only thing that distinguishes them is the range of material that can be used in the given analysis, *See also*: Czarnecki S, *Analiza Kryminalna...*, p. 25, and Safjański T, *Europejskie Biuro Policji Europol: geneza, główne aspekty działania, perspektywy rozwoju*. Warsaw, 2009, p. 257.

⁴¹ Gołębiowski J, *Praca operacyjna w zwalczaniu przestępczości zorganizowanej*. Warsaw, 2008, p. 55.

⁴² Kmiecik R, *Prawo dowodowe. Zarys wykładu*. Warsaw, 2008, p. 26.

- 2) the chain must be inseparable and free from gaps in a way that makes it impossible to rationally build another version of the incident⁴³,
- 3) the individual circumstantial evidence being links in this chain must be reliably and unambiguously proven.

Criminal analysis is now the most important tool for determining the relevant circumstances of cases. In many cases, without ‘circumstantial evidence’ in the form of the result of a criminal analysis, it has been significantly more difficult, if not impossible, to establish the main fact of a criminal offence as adopted by a standard of substantive criminal law (e.g. criminal code)⁴⁴.

From a procedural point of view, the evidence that constitutes a criminal analysis can be considered in two aspects. On the one hand, it is an actual process-related activity, on the other hand, a procedural step.

Criminal analysis is not actually a new research method in the strict sense of the word, but rather, as pointed out by J. Widacki, an exclusive intra-police service, based on the search for links between specific facts, which, in the case of criminal analysis, will be various types of telecommunications, postal, banking, and insurance data. When it comes to the nature of the ‘service’, it involves various kinds of reasoning, either reducing (explaining, explication), or deductive (syllogism, verification) reasoning that has long been known in the legal logic. The work of thought-based criminal analysts cannot be substituted by anyone, and the various types of software they use are only their supporting tools. Criminal analysis itself, although certainly not being a new field of science or any particular scientific proof, is a method of researching a set of evidential information of a particular kind within the framework of forensic science.

However, its result, in the form of a statement, report, or opinion as a typical form of consolidating its results, is an invaluable source of information for procedural authorities⁴⁵.

It should be noted that the use of criminal analysis in the context of a pre-trial or trial procedure is linked to a problem concerning the legal nature of its results, namely whether it should be treated as an expert opinion or as another form of evidence⁴⁶.

Opinions on this subject are mixed, some authors believe that a criminal analysis is an expert opinion in criminal proceedings, and the analyst may act as an expert witness or a person with specialist knowledge.

This is supported by the analyst’s working methods, which go beyond the technical activities of sorting out materials in the files⁴⁷. A specific way

⁴³ This is also the case, for example, with the Supreme Court in the explanatory memorandum to the order of 1 March 2007, III KK 493/06, not published.

⁴⁴ Woźniewski K, Charakter prawnodowodowy analizy kryminalnej, University of Gdańsk, pp. 741-742.

⁴⁵ *Ibid.*, p. 743.

⁴⁶ Krajniak O, *Zorganizowane...., op. cit.*, p. 321.

⁴⁷ The analysts of special services are: employees of the information division (...) whose task is to study carefully the acquired or obtained materials and information, both secret and official, and to develop on this basis synthetic information

of developing data-rich materials with the use of advanced IT tools means that criminal analysis can be treated as an expert opinion. It seems necessary in this situation to grant law enforcement analysts the status of persons with special knowledge, or to be recognised as court experts.

In order for a criminal analysis to become a complete piece of evidence in a case, it should be carried out on the basis of a prepared methodology of action, and the individual actions carried out during the analysis should be documented so that their order and relevance to its results can be analysed⁴⁸.

Here, it is important to indicate the role of the Bureau of Intelligence and Criminal Information in the National Police Headquarters, which, together with the Central Police Forensic Laboratory, should assume the task of formalising this process.

To sum up, it should be noted that in the era of intense evolution of IT, the development of new information processing technologies is a powerful developmental impulse for criminal analysis. It constitutes a particularly useful, and thus effective tool in the work of law enforcement agencies, which certainly contributes to significant improvement of preparatory proceedings, and thus increases the quality of work of law enforcement agencies, and directly influences the increase in effectiveness of criminal proceedings. Moreover, a systematically growing market of expert services in the field of criminal analysis can be observed. Criminal analysts are increasingly being appointed as private experts in criminal cases⁴⁹, unfortunately outside of Crime Labs, where there is no such speciality yet – an expert in criminal analysis. Additionally, the diversity of its forms and methods makes it possible to apply it more and more widely, but this potential does not seem to be fully exploited nowadays.

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assessing the threat or indicating the objectives that the service should address in the course of its covert investigations'. Larecki J, *Wielki leksykon...*, *op. cit.*, p. 52. Currently, however, analytical techniques are also used in business, politics, and science.

⁴⁸ Dreżewski R, Filipkowski W, Sepielak J, *Analiza...*, *op.cit.*, p. 84.

⁴⁹ It can now be observed that there is a growing number of experts on the private market who come from the police services and who offer a wide range of criminal analysis services. The popularity of this method results from the transfer of knowledge (both skills and analytical techniques) previously reserved exclusively for police services to the civil sphere, where the market mechanism plays a major role.

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Summary: Criminal analysis in law enforcement agencies' work has been around for many years. Initially, it was used by police officers in a non-formalised way, its main purpose being to try to understand and systematise crimes. Attempts to draw conclusions from the collected data contributed to greater effectiveness of the detection process. Nowadays, the need for efficiency in processing the increasing amount of data, and the far-reaching professionalisation of criminal groups have resulted in the fact that criminal analysis is no longer a cure-all for a lack of thinking, but an indispensable tool in the effective fight against crime.

Considering the above, the article presents the need for the effective use of criminal analysis in combatting mainly organised crime of an economic nature.