

THE PROBLEM OF PROPER SUPERVISION OF SUPERIORS OVER REMUNERATING PERSONAL SOURCES OF INFORMATION

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ABSTRACT

The problem of proper supervision of financial rewarding of personal sources of information from the operational fund has not previously been the subject of scientific consideration. Its existence was signaled though in scientific studies and reports from the audits carried out in the Ministry of Internal Affairs. Incorrectness connected with this matter has been revealed for years not only in the Police units at all levels, but also in the secret services. This article deals with the symptoms and the causes of incorrectness, the mechanisms of possible criminal practices related to them. It was pointed out that it is necessary to take a more decisive corrective action, and that it is needed to move away from looking at working with personal sources of information solely on the basis of statistics.

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INTRODUCTION

For many years a wide discussion has been developing in Poland the aim of which is the study of the area of operational-inquiry activities¹. They often evoke doubts whether they are carried out in a legally governed way by authorised state services². The issue that is rarely the subject of considerations is the cooperation with personal sources of information, namely individuals who

impart confidential information to state services (informers)³. This is caused by making most of implementing acts secret, acts connected with this one method of operational work⁴. Then, it is

¹ Compare in A. Bulsiewicz, *Problematyka osoby zaufanej na tle obowiązującego ustawodawstwa oraz projektowanych zmian w Polsce*, [in:] *Prawo karne i proces karny wobec nowych form i technik przestępczości*, H.J. Hirsch, P. Hofmański, E. Pływaczewski, C. Roxin, (ed.), Temida 2, Białystok 1997, p. 457.

² A. Taracha, *Działania operacyjno-rozpoznawcze prowadzone w ramach uprawnień jako kontratyp – wybrane zagadnienia* [in:] *Współzależność prawa karnego materialnego i procesowego: w świetle kodyfikacji karnych z 1997 r. i propozycji ich zmian*, Z. Cwiakalski, G. Artymiak (ed.), Wolters Kluwer, Warszawa 2009, p. 459.

³ See among others A. Bulsiewicz, *Rola osoby zaufanej w czynnościach operacyjno-rozpoznawczych i procesie karnym*, Przegląd Policyjny 1992, no. 2-3; R. Netczuk, *Tajny współpracownik policji na tle prawno-porównawczym*, Wydawnictwo Uniwersytetu Śląskiego, Katowice 2006; R. Netczuk, *Tajny agent policji w świetle nowego kodeksu postępowania karnego oraz ustawy o Policji*, Problemy Prawa Karnego 2001, no 24; R. Netczuk, *Tajny współpracownik i tajny agent w projektach ustaw o czynnościach o czynnościach operacyjno-rozpoznawczych: uwagi de lege ferenda*, Wojskowy Przegląd Prawniczy 2010, no. 3.

⁴ T. Hanausek, *Kryminalistyka w Polsce przełomu wieków*, Problemy Kryminalistyki 2001, no 232, p. 6; M. Kolejwa, *Poufne osobowe źródła informacji w badaniach kryminalistycznych* [in:] *Poufne osobowe źródła informacji w rozpoznaniu, inwigilacji i wykrywaniu sprawców przestępstw kryminalnych*, *Materiały z konferencji naukowej Warszawa*

necessary to carry out analysis limited not only to easily accessible aspects of this issue. It is particularly necessary to concentrate on things that are intentionally concealed from public opinion as they may lead to the weakening of credibility of state institutions that safeguard public order and safety. The aim of this research is creating a fuller image of reality and, consequently, presenting practical recommendations for necessary recovery actions⁵.

In case of cooperation with personal sources of information one of the issues that has not been a subject of analysis⁶, is the problem of proper supervision of superiors over remuneration paid to informers⁷.

OPERATIONAL FUND

All services possessing authorisation to carry out operational-inquiry activities have operational funds at their disposal. The resources they include serve, among others, the covering of expenses connected with remunerating individuals who give help to a particular service. Principles of using resources from such funds as well as their amounts are secret. Paid amounts as well as other forms of gratification⁸ are varied, depending on the importance of imparted information. In case of the Police who these considerations will be mainly devoted to, these resources are disbursed on the ground of art. 22, clause 2a of the act on the Police⁹ and principles under which this fund is created and managed are defined according to art. 22, clause 3 of the afore mentioned act by an instruction of a proper minister for internal affairs¹⁰.

26-27 września 1983 r., M. Kolejwa (ed.), Wyd. ASW, Warszawa 1984, p. 34.

⁵ See *Deklaracja Rady Programowej Zakulisowych Studiów Społecznych* - S. Cenckiewicz, *Długie ramie Moskwy. Wywiad wojskowy Polski Ludowej 1943-1991 (wprowadzenie do syntezy)*, Zysk i S-ka, Poznań 2011, p. 2.

⁶ Compare in K. Horosiewicz, *Nadzór przełożonych nad współpracą policjantów z osobowymi źródłami informacji*, Przegląd Policyjny 2013, no 3.

⁷ Compare in Z. Rau, *Problematyka prowadzenia pracy operacyjnej Policji a bezpieczeństwo prawne policjanta i prokuratora*, Prokurator 2007, no 1, p. 18-20.

⁸ E. Gruz, M. Goc, J. Moszczyński, *Kryminalistyka – czyli rzecz o metodach śledczych*, WAIp, Warszawa 2008, p. 67.

⁹ Dz. U. 1990 Nr 30 poz. 179 z późn. zm.

¹⁰ Zarządzenie nr pf-1/05 MSWiA z dnia 10.01.2005 r. w sprawie zasad tworzenia i gospodarowania funduszem

OPERATIONAL WORK REALITIES

Official documents, e.g. answers to the questions of members of parliament¹¹ do not allow to notice a very important part of reality connected with operational fund. On the other hand its manifestation may be the statement of former deputy Prosecutor General K. Olejnik, according to whose opinion: "If a police officer wants to steal money from operational fund, practically there is no way to prevent him from doing this"¹². It is a serious message that may indicate the existence of certain improprieties. Equally disturbing are also reports of the media in which it is signalled that financial resources from operational fund, in a certain part, find their way into the pockets of the policemen and it is supposed to happen in a great many instances¹³. Yet they cannot be the measure of the proper use of these resources. Nevertheless, one may not remain completely indifferent to them as the role of the media is, among others, to inform about occurring pathologies which, due to various reasons, are not analysed by competent state organs.

The existence of the problem of proper supervision over remunerating personal sources of information is also pointed to in scientific studies¹⁴. For example, in the results of empirical research carried out among operational officers of the Police it is indicated that one of the basic

operacyjnym Policji, unpublished; and Wytyczne nr 2 pf KGP z dnia 13.10.2008 r. w sprawie stosowania przepisów dotyczących gospodarowania funduszem operacyjnym Policji w zakresie kwalifikowania i dokumentowania niektórych wydatków operacyjnych, unpublished.

¹¹ See zapytanie nr 4337 do ministra spraw wewnętrznych w sprawie opłacania tajnych współpracowników Policji; <http://www.sejm.gov.pl/sejm7.nsf/InterpelacjaTresc.xsp?key=27432B86&view=null>; access 24.02.2014; and Odpowiedź podsekretarza stanu w Ministerstwie Spraw Wewnętrznych – z upoważnienia ministra - na zapytanie nr 4337 w sprawie opłacania tajnych współpracowników Policji; <http://www.sejm.gov.pl/sejm7.nsf/InterpelacjaTresc.xsp?key=2093BC77>; access 24.02.2014.

¹² <http://www.wprost.pl/ar/57328/Skok-na-zero/>; access 17.03.2014.

¹³ <http://polska.newsweek.pl/jak-zarobic-na-agenturze,23175,1,1.html>; access 5.02.2014.

¹⁴ See P. Skubisz, *Falszerstwa dokumentacji operacyjnej popełnione przez funkcjonariuszy Urzędu Bezpieczeństwa i Służby Bezpieczeństwa* [in:] *Osobowe środki pracy operacyjnej – zagadnienia źródłoznawcze*, F. Musiał (ed.), IPN, Kraków 2013 and R. Szczypta-Szczęch, *Zwolniony dla dobra służby. Studium przypadku Jana Nowaka* [in:] *Osobowe środki...*

problems in conducting operational work is the mutual lack of trust of policemen making use of operational fund and their superiors¹⁵. Unfortunately, it was not clearly explained what is exactly concealed under this statement. Yet, potential sources of this distrust are visible, for example, in reports of supervision activities carried out in the resort of internal affairs and administration in the years 2006, 2008, 2009, 2010 and 2012¹⁶. Many improprieties within the managing of operational fund were indicated in them. It is worth to emphasise the fact that they were revealed in Police units of all levels including Central Bureau of Investigation of the General Police Headquarters.

SYMPTOMS OF IMPROPRIETIES

Hereunder there have been presented only the most important of these improprieties which are connected with the remunerating of personal sources of information by policemen:

1. lack of documentation of the meetings with PSI (personal sources of information), during which these sources were paid,
2. documenting of the fact of giving money inconsistent with regulations,
3. dishonest documenting of the meeting with an informer,
4. lack of documentation concerning the giving over of remuneration for a PSI in the presence of another policeman,
5. large percentage of cases of not collecting receipts from PSIs for received remuneration and settling of accounts concerning payments with the policemen's reports,
6. building of a structure of spending the fund based on gratifying informing individuals (anonymous) first of all,
7. lack of documents proving the way of the use of information or activities undertaken in connection with the use of information,
8. irrational and groundless spending of operational fund resources by paying gratifica-

tions to PSIs in cases when imparted information had not been confirmed or had not brought about a lawsuit or operational effects,

9. keeping documentation in such a way that it makes it impossible to define in which case the information acquired on the way of operational work with a PSI was used and what effect it brought about,
10. gratifying PSIs for information about wanted people confirming their stay in the place of permanent residence and for information of a large degree of generality reflecting knowledge generally known,
11. showing payments of financial resources to co-workers in situation when actually other people received the money.
12. cases of confirming by co-workers of having received gratification with the use of "machine" receipts,
13. double gratifying of the same person for the same imparted information¹⁷.

SCOPE OF IMPROPRIETIES

Yet it is difficult to assess particular improprieties as in most reports there is lack of such statements. Only in the one of 2012 it was shown that e.g. 94,7% of expenses assigned for the purchase of property components and for operational activities were not documented with accounting receipts required by internal regulations. Yet the small number of inspected units that were the basis for such assessment does not allow too far-going generalisations.

The scope of possible abuse in the Police connected with remunerating personal sources of information neither can be specified on the ground of available statistical data¹⁸ as there does not exist separate category of deeds connected with the area of operational- inquiry activities. If they are revealed, they can be demonstrated as crimes connected with the lack of performance of official

¹⁵ Z. Rau, *Czynności operacyjno-rozpoznawcze w polskim systemie prawa – działania w kierunku uniwersalnej ustawy* [in:] *Praktyczne elementy zwalczania przestępczości zorganizowanej i terroryzmu. Nowoczesne technologie i praca operacyjna*, L. Paprzycki, Z. Rau (ed.), Wolters Kluwer, Warszawa 2009, p. 722.

¹⁶ All the reports can be found on website: bip.msw.gov.pl – on website bookmark Kontrola.

¹⁷ The above mentioned list of incorrectness was based on the reports from a control in the Ministry of Internal Affairs and Administration in 2006, 2008, 2009, 2010, 2012.

¹⁸ See M. Działoszyński, J. Wójcik, *Zapobieganie i zwalczanie przestępczości w Policji na przykładzie działalności Biura Spraw Wewnętrznych Komendy Głównej Policji* [in:] *Praktyczne elementy...*, p. 305-314.

duties or directed against the credibility of documents.

CAUSES OF IMPROPRIETIES

Ministerial inspectors perceive the causes of the occurrence of the above mentioned improprieties and offences, among others, in wrong interpretation, weak knowledge or even lack of knowledge of rules that regulate the management of operational fund of the Police by people responsible for proper official supervision over the overall operational work. Additionally the lack of supervision of middle level superiors of criminal department over abiding the rules regulating operational work was also noticed.

NEGLECTING POST-INSPECTION CONCLUSIONS

On the other hand, surprising are the post-inspection conclusions contained in discussed reports in which it has been revealed that demonstrated serious improprieties do not constitute basis for directing applications for criminal prosecution or commencement of disciplinary procedure. Strengthening of supervision, starting remedy and organisational-disciplinary actions and conducting deepened inspections were recommended.

It may prove that detected mechanisms are treated with disregard or the lack of knowledge of studied problems. Taking into consideration the repeatability of the same improprieties in subsequent reports it is necessary to state that even those nonsufficient recommendations are often treated with disregard. Only in the case of the inspection in the Department of Operational Technique of the Capital Police Headquarters in Warsaw, which was carried out only after the prosecutor's office started inquiry concerning improprieties in the managing of operational fund¹⁹, post-inspection conclusions differ from those presented earlier.

¹⁹ See <http://tvp.info/informacje/polska/oskarzony-o-zagarniecie-50-tys-zl-z-funduszu-operacyjnego/11413831>; access 5.02.2014 and <http://www.gazetafinansowa.pl/index.php/warszawskagazeta/4539-fundusz-cile-tajny>; access 24.02.2014.

IMPROPRIETIES IN SPECIAL SERVICES

Of course, it would be unfair towards the Police to state that only there this type of improprieties takes place. They also occur in other services, including special services as well. Yet, they are not disclosed in official post-inspection reports. The example are two investigations concerning the contravening of entitlements in order to achieve financial benefits by Intelligence Agency officials. In one of them, marked with the clause of secrecy and ended with the bringing of indictment to the law court, within the period of 9 years about 1,5 million PLN was siphoned-off from the operational fund²⁰. In the other investigation only one of many payments not accounted for amounted to 50 thousand PLN²¹. Then it is well grounded to ask about the supervision of superiors over spending public money in the most elite one of Polish special services. It is the more essential that these dealings could have lasted for many years²². In the opinion of former Chief of Intelligence Agency, general Z. Nowak, it denotes the downfall of internal system of supervision²³.

CONSEQUENCES OF DISCLOSED IMPROPRIETIES

Many cases in the Police in which there exist well-grounded suspicions of a crime having been committed, due to badly understood good of the service, do not find their epilogue in the courtroom. Most often the consequences are not drawn or they are not too painful – earlier retirement or transfer to another official position, particularly when it relates to people deciding about spending resources from the fund²⁴.

²⁰ <http://konflikty.wp.pl/kat,1020231,title,Dwoch-oskarzonych-o-przywlaszczenie-15-mln-zl-z-funduszu-Agencji-Wywiadu,wid,16362482,wiadomosc.html>; access 5.02.2014.

²¹ <http://www.rp.pl/artukul/601122.html>; access 5.02.2014.

²² http://wyborcza.pl/duzyformat/1,136811,15646815,W_polskim_wywiadzie_kase_defraudowano_od_lat_Gdy.html#TRrelSST; and http://wyborcza.pl/1,75478,15659418,Dlaczego_ginie_kasa_w_Agencji_Wywiadu.html; access 6.04.2014.

²³ <http://wpolityce.pl/wydarzenia/33725-kolejna-afera-fundusz-operacyjny-agencji-wywiadu-zostal-wyczyszczony-mogly-zniknac-nawet-dwa-miliony-zlotych>; access 24.02.2014.

²⁴ <http://polska.newsweek.pl/jak-zarobic-na-agenturze,23175,1,1.html>; access 5.02.2014.

In ministerial reports it is many times indicated that there is lack of knowledge of principles regulating the spending of resources from operational fund or even acting against these principles by people who manage them – there, then, arises the question concerning their competence. As non-sufficient in relation to the needs it is necessary to assess both the number of training courses in the field of supervision over operational work and the time devoted during those training courses to issues concerning the supervision of spending resources from operational fund²⁵.

POSSIBLE WAYS OF SIPHONING-OFF OF RESOURCES FROM OPERATIONAL FUND

Yet, the results of the above mentioned inspection, despite being often ignored, show where to look for possible manifestations of crime connected with operational fund. Mechanisms of such practices are easy to detect by people acquainted with these problems. This relates to, say, paying anonymous informers, first of all. This category of sources is not recorded²⁶ so, checking whether delivered receipt for received remuneration was signed by the person who had provided information is practically impossible. Analysing ministerial reports it is possible to indicate possible ways that serve the siphoning-off of resources from operational fund.

- accounting for the remuneration paid based on the official's report without receipt. The lack of it is explained by the fear of the personal source of information (informer) of his/her unmasking. It is then impossible to determine who the money went to. This solution is considered admissible in exceptional situations and, thereby, it should be of incidental and not frequent character,
- counterfeiting by an officer of the receipt of having received resources from the fund "onto the account" by an existing

source of information for information actually not provided or acquired by the policeman in the course of investigation or his own operational findings,

- creating by a policeman documentation of a fictitious personal source of information²⁷ and submitting falsified receipts of remuneration from the fund.

POSSIBILITIES OF USING THE STUDY OF HANDWRITING

The above mentioned ways are possible to apply as receipts for remuneration by personal sources of information presented by an official to the holder of the fund are superficially compared to other receipts signed by the same source. Above that, such receipts may be signed with initials or an alias written with block capitals. Identifying their author could constitute a great challenge for an experts of the study of handwriting and in many cases it could be burdened with a considerable risk of mistake. One is to look for sources of difficulty connected with the possible giving of opinion in the shortage of proper quality of comparative material required to give proper opinion²⁸. Presently one does not practically receive from a personal source of information any materials in writing in the form of a CV, list of family members and acquaintances or, above all, denunciations written with his/her own hand²⁹. Obligation to cooperate has taken the form of a form signed by the source. It neither seems possible to obtain, without commencing a lawsuit, proper comparative material from the policeman, both influential and non-influential. It is also difficult to imagine, in case the holder of the fund has any doubts as to the authenticity of the signature on the receipt, that he/she would ask for help of a handwriting expert e.g. from the police crimi-

²⁵ See Decyzja nr 35 KGP z dnia 23 stycznia 2008 r. w sprawie programu kursu specjalistycznego dla policjantów służby kryminalnej w zakresie sprawowania nadzoru nad prowadzeniem pracy operacyjnej (Dz. Urz. KGP 2008.3).

²⁶ More details on the subject of personal sources of information in E. Gruza, M. Goc, J. Moszczyński, *Kryminalistyka – czyli...*, p. 66-67; and R. Netczuk, *Tajny współpracownik policji...*, p. 111-113.

²⁷ This topic will be presented more widely in a separate study.

²⁸ See T. Tomaszewski, *Materiał porównawczy – kluczowy problem w ekspertyzie podpisów*, Człowiek i Dokumenty 2012, no. 27, p. 55-64; and T. Widła, *Badania dokumentów* [in:] *Kryminalistyka*, J. Widacki, (ed.), C.H. Beck, Warszawa 2008, p. 228-229.

²⁹ Compare in F. Musiał, *Podręcznik bezpieczeństwa. Teoria pracy operacyjnej Służby Bezpieczeństwa w świetle wydawnictw resortowych Ministerstwa Spraw Wewnętrznych PRL (1970-1989)*, IPN, Kraków 2007, p. 114.

nal laboratory or operational consultant³⁰. It would be partly in conflict with the major principle of protection of the source of information. Yet, as part of an inspection meeting it is possible to collect comparative material from an informer in the presence of a supervising superior. Undoubtedly, it could negatively influence further carrier of such a superior who would have to apply, under art. 34 clause 5 point 1 of the Act on protection of secret information³¹, to the General Police Commander for giving his one-time consent to make specific secret information available to a person who does not have appropriate certification of safety. It should not be forgotten that holders of operational fund do not possess any specialist knowledge concerning the study of handwriting. Additionally, when other receipts were also signed by a policeman cooperating with a personal source of information, even an expert examining them has a limited possibility to ascertain such a fact. In particular it relates to situations when a personal source of information (informer) is fictitious and all available documentation was created solely by a functionary. For that reason there is a well grounded conclusion that usefulness of handwriting studies is unfortunately minor in cases when the above described improprieties occur.

THE ROLE OF INTERNAL AFFAIRS BUREAU OF GENERAL POLICE HEADQUARTERS

Too weak activity of the officials of Internal Affairs Bureau of General Police Headquarters is visible regarding these dealings. They commence operations only when they get hold of information coming from notifications of colleagues of people who perpetrate such abuses. Above that, wanting to check their suspicions, they must contact directly those personal sources of information who were formally paid money from operational fund. If such a procedure is started, certain reservations

occur as to the professionalism of operations started within this scope³².

So it is very rare and only by accident that criminal activity connected with the siphoning-off of resources from operational fund is revealed³³. This is caused by the lack of systemic and specific supervision over the activities of operational functionaries from direct superiors³⁴ and frequent abandoning of the obligation to participate in meetings with an assisting policeman³⁵. It is also the result of abandoning principles of cooperation, gained for years, with personal sources of information, that R Jaworski aptly took notice of³⁶. Audio-visual recording of the meetings could be a partial solution of the problem³⁷. Yet, presently, it creates many problems of formal and technical character.

CONCLUSION

Excessive formalism in operational work due to its specificity is not always recommended, but also possible, as, in reality, information is most important as well as the way it is used. Yet, certain rigors must be strictly obeyed, particularly when it relates to the remunerating of personal sources of information. Sometimes they are paid considerable quota and in this area there should not be any arbitrariness. The more that supervision over using them is limited. Also, it is necessary to enforce the knowledge of appropriate procedures and to apply them by the functionaries, to conduct supervision by the superiors properly as well as drift away from looking upon cooperation with personal sources of information solely through the lens of police statistics – number of informers at the policeman's disposal. Such attitude only solidifies visible fall of effectiveness of the Police within cooperation with personal sources of information.

³²http://wiadomosci.gazeta.pl/wiadomosci/1,114871,12094058,Okradali_policyjny_fundusz__Dlaczego_zginal_policyjny.html; access 5.02.2014.

³³ Ibidem.

³⁴ K. Horosiewicz, *Nadzór przełożonych...*, p. 247.

³⁵ Ibidem, p. 246.

³⁶ R. Jaworski, *Aktualne zagadnienia informacji i dowodów pochodzących ze źródeł osobowych* [in:] *Czynności procesowo-kryminalistyczne w polskich procedurach*, V. Kwiatkowska-Darul (ed.), Wydawnictwo UMK, Toruń 2004, p. 129-130.

³⁷ On the subject of the different use of such records see P. Herbowski, *Voice Analyser and New Possibilities in Control of Informants*, Internal Security 2012, vol. 4, no 2.

³⁰ See I. Kordas, *Rola eksperta w pozaprocessowych ustaleniach faktycznych – kontrola korespondencji w ramach czynności operacyjno-rozpoznawczych* [in:] *Problematyka dowodu z ekspertyzy dokumentów*, t. II, Z. Kegel (ed.), Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław 2002, p. 939-942.

³¹ Dz. U. 2010 Nr 182 poz. 1228.

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