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Secret Eavesdropping of Telephone Conversation – from Operative-investigative Measure to Covert Investigative Action

In this article there will be analyzed a processual development of the secret eavesdropping of a telephone conversation. Particularly will be underlined the process of its creation as an operative-investigative measure and its later transformation into a covert investigative action. When discussing this topic, main focus will be made on the content and main tasks of secret eavesdropping of a telephone conversation as an operative-investigative measure, differentiating aspects of operative-investigative measures and investigative actions, also there will be analyzed the reasons and preconditions for development of secret eavesdropping of a telephone conversation as an investigative action.

Keywords: *Secret eavesdropping of telephone conversation, operative-investigative measure, principles/ legal basis for implementation/main tasks of operative-investigative measures, law on “operative-investigative activities”, covert methods, legal form of legal relation, preventive nature of a measure, investigative control, prophylactic measure.*

1. Introduction

The issue of processual regulation of secret eavesdropping of telephone conversation does not lose its relevance. Therefore it is interesting to study its development, especially during the last few years. As a result of a reform of 2014 secret eavesdropping of telephone conversation, which used to be an operative-investigative measure, now is foreseen as a covert investigative action in Criminal Procedure Code of Georgia (GCPC).¹ In this article precisely this transformation of secret eavesdropping of telephone conversation from operative-investigative measure into covert investigative action will be analyzed. The research will be presented in the following order: The second chapter will cover the concept and history of origins of operative-investigative measures.

In the third chapter there will be discussed secret eavesdropping as an operative-investigative measure. Main focus will be made on the law of Georgia on Operative-investigative Measures and the place that secret eavesdropping of telephone conversation has in the past occupied in this law as one of the operative-investigative measures. In the fourth chapter a research will be presented on differences between operative-investigative measures and investigative actions. Precisely after analyzing these differentiating aspects it will be possible to observe a number of circumstances that have played a role in amending Criminal Procedure Code² in 2014 regulating this procedural activity as a covert investi-

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¹ See Law of Georgia on amending law of Georgia on “Operative-investigative Activities”, 01/08/2014, № 2635-RS, which deleted the secret eavesdropping of a telephone conversation from this law. Also, see: Law of Georgia on amending Criminal Procedure Code of Georgia 01/08/2014, № 2634-RS.

² See Law of Georgia on amending Law of Georgia on “Operative-investigative Activities” 01/08/2014, № 2635-RS.

gative action. The article will of course also cover the critique that is presented in the literature regarding the transformation of secret eavesdropping of telephone conversation into covert investigative action. In the end there will be a conclusion that will serve as a result of a research on transformation and development of secret eavesdropping of telephone conversation.

2. Concept and History of Origins of Operative-Investigative Measures

In order to understand the legal nature of secret eavesdropping of telephone conversation as covert investigative action, first of all it is important to discuss its previous form – operative-investigative measure. It is interesting to analyze the history of origins, concept and meaning of operative-investigative measures.

2.1. Historical Aspect of Operative-Investigative Measures

Operative-investigative measures have an ancient history of origins. Conspiratorial, covert methods have always been an important and effective tool in the hands of government to ensure safety. Historically operative measures have been known under various names, such as “work of spies”, “espionage”, and “intelligence work”.³

Throughout the history of Georgia conspiratorial work of spies has functioned well during the reign of Davit Agmashenebeli (Davit IV).⁴ It is considered that in order to guarantee the safety of the country King Davit has transformed previously underestimated work of spies into an effective tool.⁵ Historical sources claim that King Davit IV had an information on everything that happened in his country, in particular in the army, in the church or houses of the elite nobles.⁶ With the help of the spies the king was probably aware of a situation in the neighboring countries and enemy territories.⁷ According to the historian of King Davit, every person knew that every word spoken was instantly known by the king.⁸ In this historical source the operative nature of the work of spies is underlined,

³ *Aladashvili B.*, Special Forces and Espionage, Book I, Tbilisi, 2005 (in Georgian); *Aladashvili B.*, Secret of Espionage, Tbilisi, 2007 (in Georgian); *Aladashvili B.*, Special Forces and Espionage, Book II, Tbilisi, 2009 (in Georgian), cited in: *Usenashvili J.*, The Issue of Exercising the Right to Privacy when Implementing the Operative-investigative Measures under the Court Supervision, Journal “Law”, № 2, 2012, 89 (in Georgian).

⁴ *Lortkipanidze M.*, Georgia in the End of 11th Century and in the First Quarter of 12th Century, Davit IV Agmashenebeli, in: Research on Georgian History, *Anchabadze Z., Guchua V.* (eds.), Vol. 3, Tbilisi, 1979, 223-224 (in Georgian).

⁵ *Aladashvili B.*, Secret of Espionage, Tbilisi, 2007, 3, cited in: *Usenashvili J.*, The Issue of Exercising the Right to Privacy when Implementing the Operative-investigative Measures under the Court Supervision, Journal “Law”, № 2, 2012, 89 (in Georgian).

⁶ *Lortkipanidze M.*, Georgia in the End of 11th Century and in the First Quarter of 12th Century, Davit IV Agmashenebeli, in: Research on Georgian History, *Anchabadze Z., Guchua V.* (eds.), Vol. 3, Tbilisi, 1979, 223 (in Georgian).

⁷ Ibid, 224.

⁸ Ibid.

when mentioned that King Davit has done great deeds and has solved extremely urgent matters with the help of these spies and he has done all this only for a good cause.⁹

As one of the most well-known pieces of literature on the theory and practice of espionage is considered a tract written in 11th Century – “Sanet-name”, which included a number of recommendations on espionage and suggested the nations to have many spies.¹⁰ There is a considerable claim that King Davit Agmashenebeli has predominantly taken exactly this tract into consideration when creating a network of spies.¹¹

As for later history of our country, in particular soviet era, there were special divisions for conspiratorial, operative actions (so-called “Special Forces”), which worked under “KGB”¹² and “GRU”^{13, 14}. Operative-investigative measures got a very intense and uncontrolled nature, but soviet officials and ideology agencies kept denying this.¹⁵ The history has later revealed the invisible side of so-called Special Forces.¹⁶

In the modern era operative-investigative measures stay as one of the most effective mechanism when fighting against crime. Having information on every possible threat before the start of investigation has been and remains as an important tool in the hands of government in the context of prevention. Because having information is important and useful. Knowledge is power.¹⁷ The majority of the citizens wants to live in a safe state, where government possesses all necessary information, for example about an expected threat and is able to prevent this threat by conducting effective activities.¹⁸

2.2. Concept of an Operative-Investigative Measure

The legal term “operative-investigative measure” was first used in the Principles of Legal Procedures of Soviet Union and Allied Republics (1958),¹⁹ where Art. 29 stated that “operative-investigative measure is used in order to reveal the indications of a crime and a person that has committed it”.²⁰ This definition was used in the correspondent laws of allied countries as well.²¹ This legal definition was followed up by formulating a concept of an operative-investigative activity in the soviet

⁹ Ibid.

¹⁰ *Usenashvili J.*, The Issue of Exercising the Right to Privacy when Implementing the Operative-investigative Measures under the Court Supervision, Journal “Law”, № 2, 2012, 90 (in Georgian).

¹¹ Ibid.

¹² KGB of the USSR — State Security Committee.

¹³ GRU — Main Intelligence Agency.

¹⁴ *Usenashvili J.*, The Issue of Exercising the Right to Privacy when Implementing the Operative-investigative Measures under the Court Supervision, Journal “Law”, № 2, 2012, 90 (in Georgian).

¹⁵ *Bakradze A.*, Prosecutorial Supervision and Fight against Delinquency, Tbilisi, 1977, 126 (in Georgian).

¹⁶ *Mepharishvili G.*, Life and Law, 2nd ed., Tbilisi, 2008, 181 (in Georgian).

¹⁷ *Paeffgen H.* –U., Vernachrichtendienstlichung des Strafprozesses, Goldammer’s Archiv für Strafrecht, *Wolter J., Pötz P.* –G., *Küper W., Hettinger M.* (hrbg.), Heidelberg, 2003, 659.

¹⁸ Ibid, 660.

¹⁹ *Bakradze A.*, Prosecutorial Supervision and Fight against Delinquency, Tbilisi, 1977, 125 (in Georgian).

²⁰ *Buadze K., Mzhavanadze Z.*, Legal Basis for Operative-investigative Measures, Kutaisi, 2011, 16 (in Georgian).

²¹ Ibid, 16-17.

literature. For example, according to *Ratinov*, “Operative-investigative occupation is a system of intelligence activities which based on the law and other normative acts uses special tactical and technical methods in order to prevent crimes, solve cases and search for perpetrators. Operative-investigative measures are carried out with both overt and covert methods and tools. Using covert methods is a special competence of intelligence agencies, for what they possess necessary means and special staff. As for the overt forms of operative-investigative measures, they can be used by investigators as well, but only as a technical tool to ensure the effectiveness of investigative actions”²². *Bakradze* does not agree with this definition and states that use of operative-investigative measure by an investigator as a technical tool is wrong, because criminal procedural legislature of that period did not give an investigator permission to carry out actual operative-investigative measures.²³ *Bakradze* agrees with a Russian scientist *Yasinsky*, who criticizes *Ratinov* and thinks that operative-investigative activities in the intelligence agencies were an occupation outside the procedure.²⁴ For his part, *Bakradze* mentions that “the meaning of operative-investigative activities is defined based on the combination of all those covert measures and tools that represent activities outside the criminal proceedings and are focused on preventing the preparation of crime, uncovering the persons who should be prosecuted for open cases and on finding the location of and arresting wanted criminals”²⁵. According to *Bakradze*, despite instigators of Ministry of Internal affairs and operating officer being workers under the same institution and fulfilling the same mission of fighting crime, each of them have their own rights and obligations, that are regulated by procedural law and also by interinstitutional instructions.²⁶

The concept of operative-investigative measures developed by the soviet scientists had an influence on defining operative-investigative measures in the law of independent Georgia on “Operative-investigative Activities”, which was passed in 1999 and is still being used. According to Art. 7 I of this law, an operative-investigative measure is an action carried out by a state body or an official duly authorized under this law, who/which, within the scope of their powers, ensures the fulfilment of the objectives specified in Art. 3 of this Law. These objectives are:

- a) identifying, putting an end to and preventing a crime or any other unlawful act;
- b) identifying a person who prepares, commits or who has committed a crime or other unlawful act;
- c) for the purpose of presenting him/her to a relevant state authority, locating a person who, despite having been summoned, fails to appear before an investigation or a court; the search for an accused or convicted person and ensuring their appearance before a relevant state authority if such person avoids the application of an imposed measure of coercion or the serving of an imposed sentence;
- d) the search for and identify the property lost due to criminal or other unlawful activity;

²² *Ratinov A. R.*, Interaction between Investigators of the Prosecutor’s Office and the Police in Investigating Crimes. Practice of Application of the New Criminal Procedure Legislation, Moscow, 1962, 86-90, cited in: *Bakradze A.*, Prosecutorial Supervision and Fight against Delinquency, Tbilisi, 1977, 130 (in Georgian).

²³ *Bakradze A.*, Prosecutorial Supervision and Fight against Delinquency, Tbilisi, 1977, 130 (in Georgian).

²⁴ *Ibid*, 131.

²⁵ *Ibid*, 127.

²⁶ *Ibid*, 156.

- e) the search for a missing person;
- f) obtaining necessary facts in a criminal case;
- g) identifying (name, surname, age, citizenship of) a perpetrator of a crime or of any other unlawful act;
- h) providing information and analytical support to the management of prison facilities.

After a short review of history of origins and concept of operative-investigative measures it is useful to analyze secret eavesdropping of telephone conversation as an operative-investigative measure itself.

3. Secret Eavesdropping of Telephone Conversation as an Operative-Investigative Measure

It is worth mentioning that there are two main models of legal regulations in various national legal systems.²⁷ They are conventionally called post-soviet and west European models.²⁸ In various western European countries (among them in Germany), operative-investigative activities are considered to be ordinary procedural actions that are regulated by the criminal procedure code; As for the legal model of the post-soviet countries (for example, Azerbaijan) such kind of activities are regulated by independent normative acts.²⁹ In Georgia such activities are regulated by an independent act as well, precisely, by abovementioned law on operative-investigative activities.

3.1. Overview of the Law on “Operative-Investigative Activities”

Law of Georgia on “Operative-investigative Activities”, issued on 30.4.1999, determines legal preconditions, general principles, goals and types of operative-investigative activities.

According to Art. 1 I of the law, operative investigative activity is a system of measures implemented by the special services of state agencies within the scope of their authority by overt or covert methods provided for by this Law in order to protect human rights and freedoms, the rights of legal persons, and public security against criminal and other unlawful encroachments. Thus protection of a human from a criminal activity is underlined in the very first article of the law.³⁰

In the explanatory note of the law on operative-investigative activities, passed on 30.4.1999, it is stated that this draft law covers one of the important issues of law-enforcement. Solving this issue will benefit the fight against crime.³¹ This explanatory note confirms that in Georgia there was no legal framework that would regulate operative-investigative activities; in the same document it is mentioned that “as in earlier post-soviet period, in Georgia this extremely hard and sensitive area of law-enforcement is still regulated by agency-level acts. These acts are strictly confidential and most of

²⁷ *Usenashvili J.*, The Issue of Exercising the Right to Privacy when Implementing the Operative-investigative Measures under the Court Supervision, Journal “Law”, № 2, 2012, 87 (in Georgian).

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Mepharishvili G.*, Journalism of Law, Tbilisi, 2014, 115 (in Georgian).

³¹ Explanatory note of the law on Operative-investigative Activities, №1933, 05/04/1999, 1.

them are issued during the soviet period.”³² According to the explanatory note, the draft law acknowledges the reality that was in Georgia during that period in regards to the fighting crime.³³ “An attempt has been made to achieve the noble goal of fighting crime not to violate human rights and freedoms” – is stated in the document.³⁴

In the notice of former president of Georgia – Eduard Shevardnadze, that was attached to the draft law when presented to the legislative body, as a goal of this draft law, prepared by the executive body, is set protection of human rights and freedoms, the rights of legal persons, and public security against criminal and other unlawful encroachments.³⁵ In the same letter it is mentioned that the draft law “regulates the mechanisms for prosecutorial supervision and judicial review over operative-investigative activities, principles of protecting and respecting human rights and freedoms, legality, secrecy and the combination of overt and covert methods”.³⁶ President also underlines that the draft law was discussed and supported by the national Security Council as well.³⁷

It would be reasonable to briefly analyze the principles of operative-investigative activities and the legal basis for their enforcement according to the version of law on operative-investigative activities before August 2014. According to the version of the law before 1.8.2014, more precisely according to the Article 3, operative-investigative activities are based on the principles of protecting and respecting human rights and freedoms, safeguarding the rights of legal persons, as well as on legality, secrecy and the combination of overt and covert methods.³⁸

According to the Art. 3 II, an operative-investigative measure was not allowed to be implemented if it:

- a) posed a threat to human life, health, honour, dignity and property;
- b) prejudiced the rights of legal persons;
- c) was connected with deceit, blackmail, coercion or with the commission of a crime or other unlawful acts.³⁹

According to the Art. 8 I of the law on operative-investigative activities, the grounds for implementing an operative-investigative measure were:

- a) an instruction of an inquiry authority on an open criminal case, investigator or prosecutor on implementing an operative-investigative measure in respect of a case conducted by them (An operative-investigative measure is implemented upon an instruction of a person of a final decision or a person giving an order on criminal case – head of an inquiry authority, investigator prosecutor)

³² Ibid; Compare, *Papiashvili Sh.*, Issues of General Methodology of Investigation of a Crime, Tbilisi, 1991, 64 (in Georgian); *Bakradze A.*, Prosecutorial Supervision and Fight against Delinquency, Tbilisi, 1977, 125 (in Georgian).

³³ Explanatory note of the law on Operative-investigative Activities, №1933, 05/04/1999, 2.

³⁴ Ibid, 2.

³⁵ A Letter of the President of Georgia to the Parliament of Georgia, №151/1, 16/04/1999.

³⁶ Ibid.

³⁷ Ibid.

³⁸ It is worth mentioning that Art. 2 I of the current version of the law, contains a regulation identical to this norm.

³⁹ It is worth mentioning that Art. 2 V of the current version of the law, contains a regulation identical to this norm.

- b) after duly receiving a report or notification about a crime, an instruction of an inquiry authority, investigator or a prosecutor, that a crime or other unlawful action is being prepared, is being or has already been committed, which requires the conduct of a preliminary investigation, but there is no sufficient information for proving an existence of the elements of a crime or of any other unlawful action;
- c) an order to search for a person who is hiding from an investigation, or from the court or who is avoiding the serving of a sentence;
- d) a person gone missing, or the discovery of an unidentified body or ownerless property;
- e) an inquiry and request of a body conducting operative-investigative activities;
- f) an inquiry and request of an international law enforcement organization or of a foreign law enforcement body under an agreement on legal assistance.⁴⁰

Hereby, is the strictly secret nature of operative-investigative activities to underline. According to Art. 5 III of the law before 1.8.2014, it was prohibited to access data and documents about the operative-investigative activities even for the scientific or other purposes until 25 year had passed after conducting them.

3.2. Secret Eavesdropping and Recording of a Telephone Conversation According to the Law on “Operative-Investigative Activities” before August, 2014

According to the law on operative-investigative activities before 1.8.2014 among the operative-investigative measures there was secret eavesdropping and recording of telephone conversation. It is important to briefly summarize the regulations on secret eavesdropping and recording of telephone conversation from that time.

The secret eavesdropping of a telephone conversation was used by the authorities who conducted operative-investigative activities in order to reach the goals stated in Art. 3 of the law.

Interesting are the formal preconditions for implementing secret eavesdropping of telephone as an operative-investigative measure. It is noteworthy that according to the law, conducting an operative-investigative measure that restricts the privacy of communication over telephone or other technical device, which is guaranteed by the law, is allowed only with an order of a judge and a motivated ordinance of an official or upon the written notice of a person, who is a victim of unlawful actions or if there is an information on an unlawful action, which is punishable with the imprisonment for more than 2 years according to the criminal law (Art. 9 II of the law on operative-investigative activities before 1.8.2014).

Also, according to the Art. 7 III secret eavesdropping and recording of telephone conversation after opening criminal case would be conducted with an order of a judge. A motion would be discussed by a judge with a prosecutor and a representative of inquiry authority within 24 hours after receiving it on a closed hearing, where judge would receive one of the following decisions:

- a) an order on conducting operative-investigative measures;
- b) an ordinance on rejecting the motion.

On the other hand, in case of urgent necessity, as an exception with a motivated ordinance of the head of inquiry authority there was a possibility to conduct such a measure even before opening a

⁴⁰ It is worth mentioning that the current version of the law, contains the same regulation with minor changes.

criminal case (Art.7 IV of the law on operative-investigative activities before 1.8.2018). According to the same law, the abovementioned person was obliged to notify the prosecutor within 24 hours after beginning of conducting the measure, who on the other hand, within 48 hours after beginning of implementing operative-investigative measure would report to the court. The court would discuss the motion of the prosecutor within 24 hours after it was made on a closed hearing and would issue an ordinance on declaring an operative-investigative measure lawful or unlawful and therefore on canceling its results and deleting the information obtained by these activities (Art. 7 IV of the law on operative-investigative activities, before 1.8.2014). As the main significance of this law was considered exactly this most important precondition, which required judicial review on conducting certain operative-investigative measures. However it is arguable how real and effective a judicial review on a strictly confidential measure, such as secret eavesdropping and recording of telephone conversation, could have been. As mentioned above, secret eavesdropping has existed as an operative-investigative measure till 1.8.2014, after which it was foreseen as a covert investigative action in the GCPC.

After an overview of secret eavesdropping of telephone conversation as part of legal regulations of the law on operative-investigative activities, it is interesting to identify which main tasks and purposes operative-investigative measures have, according to the opinions in the scientific literature, in order to later differentiate them from the covert investigative actions.

3.3. Content and Main Tasks of Operative-Investigative Measures

A big part of the operative-investigative activities stay unnoticed for the society, because of what it is almost impossible to exercise public control over them.⁴¹ Therefore, exact and clear legislative regulation of operative-investigative measures shall be considered as the most important mechanism to ensure protection of human rights.⁴² It is worth mentioning that the core difference between so-called models of legislative regulation of operative-investigative activities lies precisely in having the pre-regulated strict restrictions. The so-called west European model, differently from post-soviet model, fundamentally declares the prohibition of gathering information using operative measures.⁴³ For example, this applies to the group of the crimes that are subject to operative measures. Generally, in the post-soviet model countries the legislator does not specify any restriction by including specific panel or categories of crimes, when corresponding agencies would not have a right to implement operative-investigative measures, which are subject to judicial review.⁴⁴ Therefore the panel of crimes stays in fact without any restriction.⁴⁵ The main part of west European model countries give allow to conduct operative-investigative measures only in case of pre-determined group of crimes.⁴⁶

⁴¹ *Usenashvili J.*, The Issue of Exercising the Right to Privacy when Implementing the Operative-investigative Measures under the Court Supervision, Journal "Law", № 2, 2012, 91 (in Georgian).

⁴² *Ibid.*

⁴³ *Ibid.*, 94.

⁴⁴ *Ibid.*, 95.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

When characterizing operative-investigative measures, some authors underline that they have special state importance, strategic and also more preventive nature.⁴⁷ The borders of operative-investigative measures, according to some authors, are significantly wide. Such kind of measures can be conducted even before opening a criminal case, while conducting an investigation and in particular cases, even after closing the criminal case.⁴⁸

The idea of operative-investigative measures is to obtain the information, identify and arrest the wanted perpetrator.⁴⁹ According to the opinion prevailing in the literature, the most important task of operative-investigative measures is to prevent, uncover and open a crime, also to identify the persons, who are preparing or have committed a crime.⁵⁰ Generally, an operative-investigative measure is used only when an act can be qualified as a crime; the information that contains the indications of an administrative offence, disciplinary misconduct or a civil tort, does not justify using an operative measure.⁵¹

Some authors indicate that using an operative-investigative measure does not mean executing criminal procedural norms, but it is induced by the requirements of the criminal and criminal procedural law and serves to the fulfillment of their goals.⁵² An operative-investigative action is a tool that uncovers all aspects and details of a criminal activity and provides the preliminary investigation with them.⁵³ Generally, operative-investigative measures result in conducting investigative actions; however, it is worth mentioning that operative-investigative measures are not only used as the initiation of the procedural activities, but also, frequently with these measures crimes are prevented, wanted person is arrested, etc.⁵⁴

In the literature it is often emphasized that information, obtained in the process of investigation of a crime, among them operative-investigative information, must be revised, studied and when needed, attached and registered by an investigator using procedural tools.⁵⁵ Such kind of materials are later transformed into the evidence using the procedural norms.⁵⁶ Therefore operative-investigative materials without procedural revision are not an evidence and on the contrary – the investigation cannot gather the total amount of evidence needed independently.⁵⁷ This means that information obtained by the operative-investigative measures can first be checked if it is true and afterwards it should endure the “oven”

⁴⁷ *Buadze K., Mzhavanadze Z.*, Legal Basis for Operative-investigative Measures, Kutaisi, 2011, 17, 25 (in Georgian); *Bakradze A.*, Prosecutorial Supervision and Fight against Delinquency, Tbilisi, 1977, 127 (in Georgian).

⁴⁸ *Bakradze A.*, Prosecutorial Supervision and Fight against Delinquency, Tbilisi, 1977, 129 (in Georgian); *Buadze K., Mzhavanadze Z.*, Legal Basis for Operative-investigative Measures, Kutaisi, 2011, 71 (in Georgian).

⁴⁹ Ibid.

⁵⁰ Ibid, 22.

⁵¹ Ibid, 19.

⁵² Ibid, 20.

⁵³ Ibid, 23.

⁵⁴ Ibid, 145.

⁵⁵ *Papiashvili Sh.*, Issues of General Methodology of Investigation of a Crime, Tbilisi, 1991, 64 (in Georgian); *Bakradze A.*, Prosecutorial Supervision and Fight against Delinquency, Tbilisi, 1977, 129 (in Georgian).

⁵⁶ *Buadze K., Mzhavanadze Z.*, Legal Basis for Operative-investigative Measures, Kutaisi, 2011, 23 (in Georgian).

⁵⁷ Ibid, 23-24.

of the criminal procedural law to transform into the legal evidence.⁵⁸ The information obtained by the operative-investigative measures is only documented according to the law and this document is confidential; therefore according to *Mepharishvili*, it is forbidden to use an operative-investigative data as an evidence in criminal proceedings, if it is not checked according to the general rules of the criminal procedure law.⁵⁹

It is also to consider that the result of operative-investigative activities may always not have a procedural meaning and may not be used in the legal proceedings. They are often used only as an informational source that is legalized through the operative-investigative activities.⁶⁰ Interesting is that in the case of secret eavesdropping of telephone conversation legislator did not restrict this operative-investigative measure only with such kind of crimes that require preliminary investigations. In the practice it could have been used for the purposes of inspection as a prophylactic measure as well.⁶¹

4. Differentiating Aspects of Operative-Investigative Measures and Investigative Actions

In order to answer the main question of this research – why was the law changed to transform the secret eavesdropping of the telephone conversation into covert investigative activity, it is essential to understand the differences between operative-investigative measures and investigative actions.

The difference between operative-investigative measures and investigative actions is a quite vague and unclear issue of the criminal procedure. Secret eavesdropping of a telephone conversation as an investigative action is an important precondition and a capable tool for effectively fighting crime in the world of modern technical developments,⁶² especially when, considering the technical innovations and accessibility, secret eavesdropping and recording of telephone conversation have become easily available for perpetrators and any other interested person.⁶³ The result could be a paradoxical situation, when other persons could violate privacy of others by secretly eavesdropping a telephone conversation that could stay unnoticed and therefore unpunished, while the investigation bodies would not have a right granted by the law to use this important source for gathering the evidence in order to investigate the crime and uncover the truth on the matter.⁶⁴ Precisely because of this and other aspects, some authors consider the regulation of secret eavesdropping of telephone conversation in GCPC as an

⁵⁸ *Buadze K., Mzhavanadze Z.*, Legal Basis for Operative-investigative Measures, Kutaisi, 2011, 146 (in Georgian).

⁵⁹ *Mepharishvili G.*, Life and Law, 2nd ed., Tbilisi, 2008, 52 (in Georgian).

⁶⁰ *Buadze K., Mzhavanadze Z.*, Legal Basis for Operative-investigative Measures, Kutaisi, 2011, 145 (in Georgian).

⁶¹ *Ibid.*, 72.

⁶² *Yurina L. G., Yurin V. M.*, Control and Recording of Conversation, Moscow, 2002, 6, 8 (in Russian); *Daniluk S., Vinogradov S., Sherba S.*, How to Eavesdrop Telephone Conversation, "Socialist Legislation", № 2(676), 1991, 32 (in Russian); *Meurmishvili B.*, Secret Investigative Activities, in: Georgian Criminal Procedure Law, Special Part, *Papiashvili L.* (ed.), Tbilisi, 2017, 518 (in Georgian); *Krüger R.*, Rechtsfragen bei verdeckten Ermittlungen aus verfassungsrechtlicher Sicht, Juristische Rundschau, Heft 12, 1984, 490.

⁶³ *Yurina L. G., Yurin V. M.*, Control and Recording of Conversation, Moscow, 2002, 9 (in Russian).

⁶⁴ *Ibid.*

investigative action inevitable.⁶⁵ On the other hand, a part of scientists are skeptical to this; they believe that secret eavesdropping of telephone conversation, considering its nature, is a pure operative-investigative measure and it is unacceptable to regulate it in GCPC.⁶⁶

First of all, are those aspects to underline that differentiate the goals and tasks of criminal proceedings and operative-investigative activities. While general goals and tasks of criminal proceedings are investigation of a crime, prosecution and rendering of justice.⁶⁷ The tasks determined for operative-investigative measures by the law are identifying, putting end to and prevention of a crime or other unlawful acts.⁶⁸ This article of the law defines more precise tasks for such kind of activities, such as search for a missing person or property, obtaining necessary facts in a criminal case, identifying a person who committed a crime or other unlawful act, etc.

When discussing the example of secret eavesdropping of telephone conversation some authors underline that if secret eavesdropping of telephone conversation is foreseen as an investigative measure, a defining feature of investigative measure will not be given, such as obtaining and attaching evidentiary material from the source directly by the investigator, because investigators themselves do not perform secret eavesdropping and recording of telephone conversation.⁶⁹ They have no capacity and resources to practice secret eavesdropping of telephone conversation themselves.⁷⁰ *Gia Mepharishvili* is against the existence of secret eavesdropping of telephone conversation as an investigative measure and supports the idea of strict distinction between operative-investigative activities and investigative actions; He finds it unacceptable to merge operative-investigative activities with the criminal proceedings. He calls this obviously false and scientifically unacceptable view.⁷¹ Also, *Bakradze* finds it necessary to strictly differentiate between the competences of investigative staff and operative-investigative service, in order to exclude any parallelism in implementing certain measures.⁷² A part of the authors consider clear differentiation between the matters of criminal proceedings and operative-investigative activities as an objective necessity as well.⁷³ *Mepharishvili* believes that it is absolutely unacceptable when an investigator adopts operative-investigative competences and investigative bodies and the prosecutor's office are declared as an operative-investigative body.⁷⁴ *Mepharishvili* considers that prosecutor's office is responsible for supervision of exact and consistent enforcement of the

⁶⁵ *Yurina L. G., Yurin V. M., Control and Recording of Conversation, Moscow, 2002, 9 (in Russian).*

⁶⁶ *Petrukhini I. L., Justice: Time of Reforms, Moscow, 1991, 81 (in Russian); Sheifer S. A., Russian Criminal Procedure, Petrukhin I. L. (ed.), 2nd ed., Moscow, 2006, Chapter 22, §8, 375 (in Russian).*

⁶⁷ Art. 1 GCPC.

⁶⁸ Art. 3, Law of Georgia on "Operative-investigative Activities", 30/04/1999.

⁶⁹ *Sheifer S. A., Russian Criminal Procedure, Petrukhin I. L. (ed.), 2nd ed., Moscow, 2006, Chapter 22, §8, 375 (in Russian).*

⁷⁰ *Petrukhin I. L., Personal Secrets (Human and Government), Moscow, 1998, 87, 92, (in Russian); Petrukhini I. L., Justice: Time of Reforms, Moscow, 1991, 81 (in Russian); Papiashvili Sh., Issues of General Methodology of Investigation of a Crime, Tbilisi, 1991, 60 (in Georgian).*

⁷¹ *Mepharishvili G., Life and Law, 2nd ed., Tbilisi, 2008, 50 (in Georgian); Mepharishvili G., Life and Law, Tbilisi, 2007, 26, 38 (in Georgian).*

⁷² *Bakradze A., Prosecutorial Supervision and Fight against Delinquency, Tbilisi, 1977, 155.*

⁷³ *Mamniashvili M., Gakhokidze J., Gabisonia I., Georgian Criminal Procedure, Special Part, Tbilisi, 2012, 106 (in Georgian).*

⁷⁴ *Mepharishvili G., Life and Law, 2nd ed., Tbilisi, 2008, 50 (in Georgian).*

operative-investigative law.⁷⁵ *Bakhradze* mentions that the role of prosecutorial supervision in this field is big and important.⁷⁶ When one state authority conducts the operative-investigative measures itself and at the same time is responsible for the supervision of its legality, then, according to *Mepharishvili*, the result will be an unusual legal symbiosis and the situation will look like the plot of “Inspector-General” by *Gogol*, where the widow of a non-commissioned officer flogs herself after committing a bad behavior.⁷⁷ The reason according to *Mepharishvili*, why such kind of system is unacceptable, is that the information received through the operative-investigative way shall under no circumstances be excluded from investigatory control.⁷⁸ Such kind of step, according to the author, could put the guarantees of human rights protection under major threat.⁷⁹ As mentioned by *Mepharishvili*, operative-investigative data is always characterized with the high level of possibility; this is exactly why there should exist a certain procedural filter that will ensure legal revision of this data according to the law; The role of such kind of filter should be adopted precisely by the investigator and the prosecutor.⁸⁰ *Bakhradze* thinks that the credibility and evidentiary power of uncovered factual circumstances should be inspected and evaluated according to the law with the procedural means.⁸¹ In opinion of *Mepharishvili*, in case of procedural regulation of secret eavesdropping and recording of telephone conversation the evidentiary sources will expand in exchange of restriction of constitutional rights of the citizens, which is unacceptable for the author.⁸²

It is worth mentioning, that the information obtained by operative activities is not always perfect⁸³ and it really is characterized with a high level of possibility⁸⁴. This can be explained among many reasons with the fact that operative measures are very specific and have a wide scope of tasks.⁸⁵ As *Foinitski* mentions, the bodies conducting operative-investigative activities work on the hot pursuit, which requires promptness from these bodies and therefore it is expected from them not to fully consider formal preconditions determined by the law.⁸⁶ In addition it is practically impossible to take an operating officer to the court to check the credibility of obtained material.⁸⁷ Considering exactly this

⁷⁵ *Mepharishvili G.*, *Life and Law*, 2nd ed., Tbilisi, 2008, 50 (in Georgian).

⁷⁶ *Bakradze A.*, *Prosecutorial Supervision and Fight against Delinquency*, Tbilisi, 1977, 153, 34, 138 (in Georgian).

⁷⁷ *Mepharishvili G.*, *Life and Law*, 2nd ed., Tbilisi, 2008, 51 (in Georgian).

⁷⁸ *Ibid.*

⁷⁹ *Mepharishvili G.*, *Life and Law*, Tbilisi, 2007, 40 (in Georgian).

⁸⁰ *Ibid.*; *Mepharishvili G.*, *Life and Law*, 2nd ed., Tbilisi, 2008, 51 (in Georgian); About the so-called legalization procedure of the information obtained with operative-investigative measures see: *Karneeva L.*, *Criminal Procedure Legislation and Practice of Proof*, “Socialist Legislation”, № 1(663), 1990, 35 (in Russian); *Petrukhin I. L.*, *Personal Secrets (Human and Government)*, Moscow, 1998, 92-(in Russian); *Petrukhin I. L.*, *Theoretical Grounds of the Reform of Russian Criminal Procedure*, Part 1, Moscow, 2004, 167-168 (in Russian).

⁸¹ *Bakradze A.*, *Prosecutorial Supervision and Fight against Delinquency*, Tbilisi, 1977, 128 (in Georgian).

⁸² *Mepharishvili G.*, *Life and Law*, Tbilisi, 2008, 181 (in Georgian).

⁸³ *Yurina L. G., Yurin V. M.*, *Control and Recording of Conversation*, Moscow, 2002, 6, 10 (in Russian).

⁸⁴ *Petrukhin I. L.*, *Theoretical Grounds of the Reform of Russian Criminal Procedure*, Part 1, Moscow, 2004, 167 (in Russian).

⁸⁵ *Yurina L. G., Yurin V. M.*, *Control and Recording of Conversation*, Moscow, 2002, 6 (in Russian).

⁸⁶ *Foinitski I. A.*, *Russian Criminal Proceedings*, Part 3, Saint-Petersburg, 1893, 5-6 (in Russian).

⁸⁷ *Petrukhin I. L.*, *Theoretical Grounds of the Reform of Russian Criminal Procedure*, Part 1, Moscow, 2004, 167 (in Russian).

specific circumstance – that bodies, which conduct operative-investigative activities, often cannot ensure to thoroughly meet all the precondition stated by the law when implementing certain measures, the obtained data should be evaluated with a great care⁸⁸ and it should be subject to exclusion from the case and to be considered inadmissible.⁸⁹

Mepharishvili underlines different specifications of conducting operative-investigative activities and investigative actions regulated by the criminal proceedings and concludes that that criminal proceedings are absolutely different from operative-investigative activities.⁹⁰ Author believes that despite operative-investigative activities having tight connection with the criminal proceedings, they radically differ from each-other with their nature.⁹¹ Operative-investigative activities have informative characteristics⁹² and are more part of the field of administrative law⁹³. Also, bodies conducting the operative-investigative activities have usually no competence to implement coercive measures (such as for example, search, seizure, interrogation).⁹⁴ This means that these bodies are prohibited from practicing executive power.⁹⁵

It is true, that among the tasks of operative-investigative measures belong uncovering and preventing crime or other unlawful actions, but as mentioned above, these activities have more preventive character⁹⁶ and unlike procedural measures are not directed against certain person.⁹⁷ An operative-investigative measure is mostly implemented before opening of criminal proceedings.⁹⁸ According to some authors, operative-investigative activities are an independent type of activities of state bodies. They are cummulation of non-procedural measures that are conducted outside of the scope of criminal law. Operative-investigative activities fulfill more wide-scale objectives and have only that in common with the criminal proceedings that they help the court, prosecutor's office and investigative bodies to open crime or other unlawful activities, also to reveal and identify the perpetrators.⁹⁹ Unlike operative-investigative measures, an investigative action cannot be conducted without specific doubt, belief¹⁰⁰ or in case of the specific investigative actions foreseen by the Criminal Procedure Code¹⁰¹ — without reasonable belief. Therefore investigative measures unlike operative-investigative measures,

⁸⁸ *Petrukhin I. L.*, Theoretical Grounds of the Reform of Russian Criminal Procedure, Part 1, Moscow, 2004, 167 (in Russian).

⁸⁹ *Yurina L. G., Yurin V. M.*, Control and Recording of Conversation, Moscow, 2002, 6 (in Russian).

⁹⁰ *Mepharishvili G.*, Life and Law, 2nd ed., Tbilisi, 2008, 52 (in Georgian); *Mepharishvili G.*, Life and Law, Tbilisi, 2007, 28 (in Georgian).

⁹¹ *Mepharishvili G.*, Life and Law, 2nd ed., Tbilisi, 2008, 51 (in Georgian).

⁹² *Mepharishvili G.*, Life and Law, Tbilisi, 2007, 39 (in Georgian).

⁹³ *Ibid.*, 39.

⁹⁴ *Sandkuhl H.*, Die Befugnisse von Nachrichtendiensten, in: FS für *Rainer Hamm*, Berlin, 2008, 625.

⁹⁵ *Ibid.*

⁹⁶ *Zakhartsev S. I.*, Operative-investigative Measures, Saint-Petersburg, 2004, 79-80 (in Russian).

⁹⁷ *Kniesel M.*, Neue Polizeigesetze contra StPO, Zeitschrift für Rechtspolitik, Heft 11, 1987, 377.

⁹⁸ *Laliashvili T.*, Georgian Criminal Procedure, General Part, Tbilisi, 2015, 44 et seq (in Georgian); *Mamniashvili M., Gakhokidze J., Gabisonia I.*, Georgian Criminal Procedure, Special Part, Tbilisi, 2012, 110 (in Georgian).

⁹⁹ *Mamniashvili M., Gakhokidze J., Gabisonia I.*, Georgian Criminal Procedure, Special Part, Tbilisi, 2012, 106 (in Georgian).

¹⁰⁰ *Tumanishvili G.*, Criminal Proceedings, Overview of General Part, 2014, 42 (in Georgian).

¹⁰¹ Art. 3 XI, GCPC.

do not cover preliminary stage of investigation, until there is an official precondition for beginning the investigation.¹⁰² This is why some authors underline the advantages of the investigative measures, because at the time of opening of criminal proceedings investigation already has enough evidentiary material and can decide on conducting an investigative action in a more competent way.¹⁰³

It is true, that a significant difference is that the purpose of criminal procedural measures is not to prevent future danger, but to investigate an offence committed in the past;¹⁰⁴ but it is worth mentioning that the prosecution, fight against crime and prevention of the crime in a way fill each-other.¹⁰⁵ Fight against a crime is not done by a prosecutor (at the desk) by planning only repressive measures, but it also implemented by conducting operative-investigative measures (in the streets).¹⁰⁶ A lot depends on correct, collaborated work of an investigator and operating officer in regards to opening crime in a short amount of time and uncovering objective truth on the case.¹⁰⁷

Operative-investigative activities are implemented with overt and covert methods (more frequently in a covert way and confidentially).¹⁰⁸ This is not a process between parties as it is in criminal proceedings and a party does not even know about their existence.¹⁰⁹ Differently from this, an investigator and a prosecutor are participants of criminal proceedings,¹¹⁰ whose competences are regulated by the procedural law.¹¹¹ Criminal procedural relations always imply a normal and legal form of legal relations, where parties have an information about legal proceedings, have proper rights and correspondent obligations.¹¹² Russian scientist *Filipov*, underlines that unlike operative-investigative measures, secret eavesdropping of telephone conversation as an investigative action is conducted according to the rule stated by the law, which has a purpose to open a crime and provide the investigation with important factual information.¹¹³ Regarding this matter, *Mepharishvili* mentions that criminal proceeding take place only between the parties and only with adversary process, where parties have a right to familiarize with the evidence gathered from the opponent party and have a big variety of right

¹⁰² *Kniesel M.*, Neue Polizeigesetze contra StPO, Zeitschrift für Rechtspolitik, Heft 11, 1987, 380; *Yurina L. G.*, *Yurin V. M.*, Control and Recording of Conversation, Moscow, 2002, 20 (in Russian).

¹⁰³ *Yurina L. G.*, *Yurin V. M.*, Control and Recording of Conversation, Moscow, 2002, 10 (in Russian).

¹⁰⁴ *Kniesel M.*, Neue Polizeigesetze contra StPO, Zeitschrift für Rechtspolitik, Heft 11, 1987, 382.

¹⁰⁵ *Ibid.*, 378; *Papiashvili Sh.*, Issues of General Methodology of Investigation of a Crime, Tbilisi, 1991, 64 (in Georgian).

¹⁰⁶ *Kniesel M.*, Neue Polizeigesetze contra StPO, Zeitschrift für Rechtspolitik, Heft 11, 1987, 378.

¹⁰⁷ *Papiashvili Sh.*, Issues of General Methodology of Investigation of a Crime, Tbilisi, 1991, 58, 71 (in Georgian).

¹⁰⁸ *Bakradze A.*, Prosecutorial Supervision and Fight against Delinquency, Tbilisi, 1977, 125 (in Georgian).

¹⁰⁹ *Mepharishvili G.*, Life and Law, 2nd ed., Tbilisi, 2008, 51 (in Georgian); *Mepharishvili G.*, Life and Law, Tbilisi, 2007, 38 (in Georgian).

¹¹⁰ *Akubardia I.*, Criminal Procedural Relations, in: Criminal Proceedings, *Gogshelidze R.* (ed.), Tbilisi, 2009, §2, 81 (in Georgian).

¹¹¹ *Mepharishvili G.*, Life and Law, 2nd ed., Tbilisi, 2008, 51 (in Georgian).

¹¹² *Ibid.*; *Mepharishvili G.*, Life and Law, Tbilisi, 2008, 38 (in Georgian); *Akubardia I.*, Criminal Procedural Relations, in: Criminal Proceedings, *Gogshelidze R.* (ed.), Tbilisi, 2009, §2, 79 et seq. (in Georgian).

¹¹³ *Filipov A. G.*, Tactics of Eavesdropping and Recording of a Conversation, Vol. 2, Omsk, 1993, 216-223 (in Russian).

protection mechanisms,¹¹⁴ what, according to the author, is impossible in case of operative an investigative activities.¹¹⁵

5. Conclusion

There is an opinion that taking in account the rights and freedoms guaranteed by the law, in modern state physical survival is only than possible, if the state is a “preventive state”.¹¹⁶ This underlines the necessity and effectiveness of intensive use of preventive measures. Particularly noteworthy is the latest trend in the criminal procedure law, which persistently proves the importance of existence of such kind of operative measures in a form of investigative actions.

However, there is a risk that these preventive measures will slowly cover the entire legal system, will go beyond the scope of preventive activities and the result will be giving “security, intelligence”¹¹⁷ or “police” authority¹¹⁸ to the criminal proceedings. Generally, in the presented “scenario of effectiveness” of operative activities as the weakest and most unprotected player stays a human.¹¹⁹ This is exactly why the state is obliged to ensure detailed legal regulation of the activities restricting human rights, such as secret eavesdropping of telephone conversation and create a transparent and legal framework for conducting them. Such kind of wish and decision cannot be fulfilled in a totalitarian and police state, for example, during the regime of Stalin or during the period of dissident-hunt.¹²⁰

Noteworthy is the trend of the abovementioned historic development of operative-investigative activities. If initially only a small group of people knew about conducting operative-investigative measures, later it was unavoidable to establish judicial review on these activities and a court decision was needed. Did not this already suggest the trend of the operative-investigative measures and investigative activities coming closer to each-other? As a result of the research, it is interesting, against the discussed practice, to summarize the important points, related to the transformation process of transformation of secret eavesdropping and recording of telephone conversation from operative-investigative measure into the investigative activity:

–The certain operative measures, among them the secret eavesdropping and recording of telephone conversation, were foreseen in the Criminal Procedure Code as covert investigative activities.

¹¹⁴ *Mepharishvili G.*, Life and Law, 2nd ed., Tbilisi, 2008, 52 (in Georgian).

¹¹⁵ Ibid.

¹¹⁶ *Paeffgen H. –U.*, Vernachrichtendienstlichung des Strafprozesses, *Goldammer’s Archiv für Strafrecht, Wolter J., Pötz P. –G., Küper W., Hettinger M.* (hrgb.), Heidelberg, 2003, 647. This view has gained a notable importance especially after the occurrences of 11.9.2001 and therefore the fantasy of security politics became free of restrictions.

¹¹⁷ *Paeffgen H. –U.*, “Vernachrichtendienstlichung” von Strafprozeß-(und Polizei-)recht im Jahr 2001, *Strafverteidiger*, 2002, 336-341.

¹¹⁸ *Paeffgen H. –U.*, Vernachrichtendienstlichung des Strafprozesses, *Goldammer’s Archiv für Strafrecht, Wolter J., Pötz P. –G., Küper W., Hettinger M.* (hrgb.), Heidelberg, 2003, 652.

¹¹⁹ Ibid, 663.

¹²⁰ *Daniluk S., Vinogradov S., Sherba S.*, How to Eavesdrop Telephone Conversation, “Socialist Legislation”, № 2(676), 1991, 32 (in Russian).

The term – operative was replaced by covert¹²¹ which is justified and necessary for these two measures that have different legal nature.

– Covert investigative measures in the GCPC have preserved their special character, what is not surprising, considering the process of their origin and development. Here is to mention that the preventive, so-called informative nature of operative measures is emphasized in the scientific literature. The statement in the GCPC,¹²² which indicates national or public security, prevention of riots or crime, protection of the country's economic interests and the rights and freedoms of other persons as a legitimate aim of the covert investigative actions, implies the specific legal nature of covert investigative measures. The above mentioned shows the operative and proactive¹²³ nature of such kind of activities.

– The GCPC requires a higher standard for conducting the covert investigative activities than for the operative measures and not only his formal but also material preconditions are given in details as well.¹²⁴ As a result, after the amendments of 2014 stronger guarantees of protection of human rights were foreseen.¹²⁵

– The main point of the criticism shown in the literature that prosecutorial supervision is conducted on the operative-investigative activities, which is necessary and serves as a filter, could be weak and insufficient. When these measures are foreseen as investigative actions, state control on their implementation is stronger. Noteworthy is also the existence of judicial review. All this is conducted according to the Criminal Procedure Code with legal and transparent methods.

– As for the opinion stated in the scientific literature that an investigative body has no capability and resources to conduct secret eavesdropping of telephone conversation itself, the legal reform has already answered this question and according to the Art. 3 XXXII an exclusive competence to conduct covert investigative actions was given to the LELP Operative and Technical Agency, which has no investigatory competence. Therefore, a prosecutor or an investigator does not have so-called operative-investigative authority; Investigation body receives the required information form the Operative and Technical Agency.

– Conducting the secret eavesdropping of a telephone conversation already means restricting a fundamental right and intervention in it, despite the gathered information being used against a person or not. The maximal restriction of preventive accessibility of personal information should be a goal of a legal state. Therefore, regulating such kind of measures by GCPC and implementing them only for the purposes of criminal proceedings should be welcomed.

¹²¹ *Tughushi T., Burjanadze G., Mshvenieradze G., Gotsiridze G., Menabde V.*, Practice of Human Rights and Case-Law of the Constitutional Court of Georgia, Judicial Practice of 1669-2012 Years, *Kopaleishvili M.* (ed.), 2013, 200 (in Georgian).

¹²² Art. 143² II, GCPC.

¹²³ *Albrecht H. –J., Dorsch C., Krüpe Ch.*, Rechtswirklichkeit und Effizienz der Überwachung der Telekommunikation nach den §§100a, 100b, StPO und der anderer verdeckter Ermittlungsmaßnahmen, Freiburg, 2003, 465.

¹²⁴ See Art. 143¹-143¹⁰ GCPC.

¹²⁵ *Gegeshidze T.*, Use of Information Obtained by the means of Electronic Communication in Criminal Proceedings – Georgian and International Standards, “Deutsch Georgische Strafrecht Zeitschrift (DGStZ)”, № 2, 2017, 45 (in Georgian).

– In the end, it is true that using the information obtained by secret eavesdropping of telephone conversation as an evidence carries a significant risk, even when it is conducted according to the requirements of the law, however the judicial practice itself should ensure that the evidence gathered as a result of such measures have high standard of permissibility in the criminal proceedings.

To conclude, the differences between operative-investigative measures and investigative activities and the points discussed above justify the existence of secret eavesdropping and recording of telephone conversation in criminal procedure law.

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