DOI: https://doi.org/10.46991/SL/2026.SP2.060

PROSPECTS FOR ENHANCING OPERATIONAL-INVESTIGATIVE ACTIVITIES IN LIGHT OF THE CASE LAW OF THE COURT OF CASSATION OF THE REPUBLIC OF ARMENIA

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Abstract. The article examines the case law of the Court of Cassation of the Republic of Armenia concerning operational-investigative (operational-search) measures conducted on the basis of judicial authorization. Its purpose is to analyse and synthesise the fundamental principles, approaches and legal positions derived from the precedent-setting decisions of the Court of Cassation that may prove useful and effective in the conduct of operational-investigative activities. Drawing on the Constitution of the Republic of Armenia, the RA Law "On Operational-Search Activities", the RA Code of Criminal Procedure and the case law of the European Court of Human Rights, the author considers judicial review as a key safeguard against arbitrary interference with the right to respect for private life. Particular attention is paid to the enhanced protection of communications between the accused and defence counsel, the two-stage test for challenging judicial decisions authorizing operational-investigative measures, the requirement that the desired result cannot reasonably be achieved by other means, the qualitative rather than quantitative assessment of the materials supporting an application, the requirements applicable to judicial acts authorizing such measures, and the conduct of "covert observation" in places of detention. The study employs the formal-legal and comparative-legal methods, as well as the analysis and synthesis of judicial practice. The author concludes that judicial oversight is a fundamental mechanism for maintaining a proper balance between constitutionally protected interests, and that the legal positions of the Court of Cassation have evolved in accordance with the principle of a reasonable balance between public and private interests.

Keywords - *criminal procedure, Court of Cassation, case law, legal approaches, operational-search measures, operational-search bodies, judicial review, right to respect for private life, evidence.*

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The article received 24 August 2026,
reviewed 02 October 2026,
accepted for publication 14 October 2026

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Introduction

In the course of fulfilling the tasks assigned to operational-search authorities, operational-search measures conducted pursuant to judicial authorization assume particular importance. Such measures constitute among the most effective means of detecting, uncovering, preventing, and suppressing offenses. Nevertheless, their application is permissible only where the objectives prescribed by law cannot be achieved through other means.

The legal foundations for the conduct of operational-search measures are established by the Constitution, while the procedure governing their implementation is prescribed by the RA Law "On Operational-Search Activities," the RA Code of Criminal Procedure, and a number of other normative legal acts.

At the same time, judicial precedents constitute an important source of law for ensuring the legality of operational-search measures, as they serve to ensure the uniform application of laws and other normative legal acts. Such precedents are binding upon all relevant actors.

Under the Constitution of the Republic of Armenia, responsibility for ensuring the uniform application of laws and other normative legal acts is vested in the Court of Cassation, which constitutes the highest judicial instance of the Republic of Armenia, with the exception of matters falling within the jurisdiction of constitutional justice.

The purpose of this scholarly article is to analyze and synthesize the fundamental principles, approaches, and positions derived from the precedent-setting decisions of the Court of Cassation concerning operational-search measures, which may prove useful and effective in the conduct of operational-search activities.

2. Judicial Review as a Safeguard of the Lawfulness of Operational-Investigative Activities

As with any other form of activity carried out by public authorities, operational-investigative activity is subject to specific mechanisms of oversight and control. They are intended to serve as an additional framework for establishing and strengthening safeguards to ensure the lawfulness of operational-investigative activities, an aspect that is undoubtedly of considerable importance in terms of ensuring the public accountability of state authorities. As has been rightly observed in the legal and scholarly literature, the distinctive nature of operational-investigative activities presents particular challenges in establishing their legal foundations and developing a reliable system of safeguards to ensure the legality of

their implementation. Accordingly, operational-investigative activities require clear and comprehensive legislative regulation capable of establishing effective mechanisms to safeguard the legality of such activities. Among the safeguards governing operational-investigative activities are prosecutorial oversight and judicial review of such activities.[1]

Furthermore, the exercise of judicial review over operational-investigative activities is directly necessitated by the significant impact that certain operational-investigative measures may have on individuals' rights and, more broadly, on their legal status. This, in turn, calls for the legal framework governing such measures to be placed on an entirely new qualitative footing, supported by reliable mechanisms for impartial review.

In this context, reference should be made to the case law of the European Court of Human Rights, according to which, "when (…) balancing, on the one hand, the respondent State's interest in protecting national security through measures of secret surveillance and, on the other hand, the seriousness of the interference with the applicant's right to respect for his or her private life, the competent national authorities enjoy a certain margin of appreciation in determining the appropriate means to be employed in pursuing the legitimate aim of protecting national security." Nevertheless, according to the European Court of Human Rights, "there must be adequate and effective safeguards against abuse." Accordingly, the Court takes into account all the circumstances of the case, including, for example, the nature, scope and duration of the measures that may be taken; the grounds required for ordering them; the authorities competent to authorise, carry out and supervise their implementation; and the type of remedy provided for under domestic law.[2]

Furthermore, the European Court of Human Rights has held that, while the choice of means employed to achieve the objectives pursued generally falls within the State's margin of appreciation, the scope of that margin may be broader or narrower depending on the nature of the right at stake. For example, "having regard to the fundamental importance of the rights guaranteed under Article 8 of the [European] Convention for an individual's identity, self-determination and physical and moral integrity, the margin of appreciation afforded to States in this sphere is

[1] See: Legal, Theoretical, and Practical Foundations of Judicial Review over Pre-Trial Proceedings: Contemporary Developments and Prospects for Improvement. A Scientific-Practical Manual / Authors: V. Yengibaryan, M. Hakobyan; Editor: D. Avetisyan. Yerevan: Asoghik, 2015, p. 66.

[2] See: the European Court of Human Rights, Roman Zakharov v. Russia, judgment of 4 December 2015, Application no. 47143/06, para. 232; İrfan Güzel v. Turkey, judgment of 7 February 2017, Application no. 35285/08, para. 85.

narrower where the case concerns rights protected solely under Article 1 of Protocol No. 1 to the [European] Convention."[3]

3. Enhanced Protection of Communications between the Accused and Defence Counsel

At the same time, the Court of Cassation has held that the enhanced protection afforded to communications between certain participants in criminal proceedings (a suspect or accused person and his or her defense counsel or legal representative), as a means of safeguarding the right to a fair trial, may, in the context of Article 8 of the European Convention, be overridden where there are sufficiently compelling factual grounds which, while precluding unjustified interference with such communications on the one hand, nevertheless establish the lawfulness of the interference on the other, while preserving the essential substance of those communications. More specifically, interference with communications afforded enhanced protection, where such interference is carried out through the application of criminal procedural measures and operational-investigative measures, may be justified both on the grounds prescribed by law and by the existence of compelling factual circumstances that, on their face, substantiate and would be sufficiently persuasive to an objective observer in demonstrating the alleged presence of elements of a criminally prohibited act committed in the course of such communications. Conversely, where communications subject to enhanced protection are subjected to unjustified interference, the criminal procedural safeguards designed to protect such communications would be deprived of their purpose and rendered devoid of practical effect.

This approach also underlies the European Court of Human Rights' jurisprudence. In particular, according to the European Court of Human Rights, lawyers cannot effectively discharge the important function entrusted to them unless the confidentiality of their communications with their clients is guaranteed. Such confidentiality is founded on the relationship of trust between lawyers and their clients, upon which the effective enjoyment of the right to a fair trial also depends.

It is noteworthy that, in the same decision, the highest judicial instance, applying the "fruit of the poisonous tree" doctrine, also deemed the record of the examination of the audio-visual recording obtained through the "internal

[3] See: the European Court of Human Rights, Gladysheva v. Russia, judgment of 6 December 2011, Application no. 7097/10, para. 93.

observation" operational-investigative measure inadmissible as derivative evidence.[4]

As the Court of Cassation of the Republic of Armenia has held in one of its legal positions concerning communications between an accused person and his or her defense counsel, the State, acting through the criminal prosecution authorities, is required, on the one hand, within the scope of its negative obligations, to refrain from unjustified interference with such communications and, on the other hand, within the scope of its positive obligations, to ensure the proper organization of such communications, thereby guaranteeing the full protection of the individual's fundamental rights.[5]

4. Challenging Judicial Decisions Authorizing Operational-Investigative Measures

In this context, particular attention should also be given to the specific features of challenging decisions authorizing the conduct of both "internal observation" and other operational-investigative measures that require prior judicial authorization. It should be noted that a legal position on this matter has already been established in Armenian case law. In particular, the Court of Cassation has identified the substantiation of the applicant's status as a victim of a violation of the right to respect for private life as a criterion for determining the admissibility of a challenge to such decisions. In challenging the lawfulness of a court decision authorizing the conduct of an operational-investigative measure, an individual must establish that there has been an interference with his or her right to respect for private life that has either directly or indirectly caused harm to the individual or affected his or her legitimate interests. The foregoing indicates that the two-stage test governing the exercise of the mechanism for challenging the lawfulness of a court decision authorizing an operational-investigative measure requires the determination of the following questions:

a) whether there has been an interference with the individual's right to respect for private life; and

b) if so, whether such interference has directly or indirectly caused harm to the individual or affected his or her legitimate interests.

[4] See: the decision of the Court of Cassation of the Republic of Armenia in the case of Narek Mayisi Khachatryan, Case No. ԱՎԴ4/0028/01/16, dated 18 September 2019.

[5] See: the decision of the Court of Cassation of the Republic of Armenia in Criminal Case No. ԱՎԴ4/0028/01/16, dated 18 September 2019.

At the same time, the Court of Cassation considers it important to emphasize that the aforementioned final criterion should not be applied in judicial practice in such a formalistic manner (excessive formalism) as to deprive an individual, in circumstances where there has been an interference with his or her right to respect for private life, of the opportunity to have the lawfulness of the court decision authorizing the conduct of an operational-investigative measure judicially reviewed. On the other hand, it should be noted that, when lodging a complaint, interested persons must substantiate the existence of the aforementioned criteria. In this regard, and taking into account the examination of judicial practice, the Court of Cassation considers it particularly important to emphasize that the fact that an individual has been charged and formally designated as an accused person on the basis of factual information obtained as a result of an operational-investigative measure cannot, in itself, establish that the aforementioned criteria have been satisfied. In particular, third parties may be charged on the basis of information obtained as a result of operational-investigative measures conducted in respect of other individuals. In the context of the issue under consideration, however, this cannot be regarded as a mechanism for protecting a legitimate interest where none of the rights of such third parties was interfered with in the course of the operational-investigative measure itself. Such persons may subsequently, within the framework of any ensuing criminal proceedings, challenge the admissibility of the factual information obtained as a result of that operational-investigative measure and relied upon as the basis for the charges.

The Court of Cassation further considers it important to emphasize that a finding, following the examination of a complaint lodged by an interested person, that the person's rights were violated as a result of an operational-investigative measure conducted pursuant to a judicial decision does not, in itself, establish that the rights of other persons were likewise violated. Thus, being confined to the grounds and arguments raised in the complaint, the higher courts examine the lawfulness of the contested decision solely with regard to the alleged violation of the complainant's rights, rather than the rights of all persons who were directly or indirectly connected with the operational-investigative measure or who may even have been subjected to interference as a result thereof.

Moreover, a finding, following the examination of an interested person's complaint, that the person's rights were violated as a result of an operational-investigative measure does not, in itself, render inadmissible the evidence obtained as a result of that measure. The interplay of these circumstances must be subjected to a careful and comprehensive assessment by the authority conducting the proceedings in order to reach the appropriate conclusion.

Thus, summarizing the foregoing, the Court of Cassation concludes that the mechanism of "effective review" of a court decision authorizing the conduct of an operational-investigative measure may be invoked by challenging the lawfulness of that decision before a higher judicial instance where, as a result of the measure, an individual has become a victim of a violation of the right to respect for private life.[6]

5. Timing of Operational-Investigative Measures and the Absence of Reasonable Alternative Means

The authority responsible for conducting operational-investigative activities is accountable for carrying out operational-investigative measures in accordance with the prescribed procedure, within the prescribed time limits, and effectively. Given that the implementation of such measures may entail restrictions on a number of fundamental rights, they cannot be carried out for excessively prolonged periods. In the context of such temporal limitations, the question of when an operational-investigative measure should be initiated becomes particularly important. The timing must be selected so as to coincide with a period during which the individual is most likely to engage in active and purposeful conduct, establish contacts with other persons, or exchange certain information.

At the same time, a practical difficulty arises in cases where, in taking measures aimed at detecting, preventing, suppressing, and investigating a number of serious and particularly serious offences, it is of paramount importance to act "while the trail is still hot"—in other words, promptly and without delay. In such circumstances, it may often be impossible to ensure effective judicial oversight while simultaneously complying with the statutory time limits prescribed by the Criminal Procedure Code of the Republic of Armenia.

In this regard, a practical difficulty may arise when, during the operational-investigative stage, applications are submitted to the court seeking authorization to conduct operational-investigative measures. In such cases, the court may require the relevant authority to substantiate that obtaining the evidence by other means would be reasonably impossible. However, compliance with such a requirement may result in the loss, alteration, destruction, or otherwise compromising of evidence.

In this context, we are of the view that the issue is not merely one of demonstrating that all other means of obtaining the relevant result have been

[6] See: the decision of the Court of Cassation of the Republic of Armenia in the criminal case concerning Ara Shahnazaryan, Case No. Բ-3683/20, dated 30 June 2022. Available at: www.datalex.am.

exhausted through previously conducted operational-investigative measures, but rather of establishing the absence of a reasonable possibility of resorting to alternative means. This is because the legislature requires not only that it be demonstrated that the desired result cannot be achieved by other means, but also that, in the circumstances of the particular case, there is no reasonable alternative means available at all.

Accordingly, we consider it appropriate for courts, when examining such applications, to take into account the specific circumstances of the operational-investigative situation that has arisen in the particular case. Moreover, the Court of Cassation of the Republic of Armenia has established a similar exception to the general rule with regard to the grounds for conducting searches, stating, in particular, as follows: "…. Where, however, the evidentiary value of information obtained through operational-investigative activities cannot be assessed, such information cannot, in itself, constitute sufficient grounds for conducting a search. Nevertheless, when considered in conjunction with other information, including the prevailing operational-investigative circumstances, it may be taken into account in determining whether a search is necessary, particularly at the early stages of an investigation, when the relevant evidence has not yet been obtained".[7]

6. Qualitative Assessment of Applications and of Operational Information

Furthermore, in its decision of 22 November 2024 in Case No. 20/01.12.2023, the Court of Cassation of the Republic of Armenia articulated the following legal position:

"(...) 13.1. Reaffirming the positions set forth in the aforementioned judicial precedents, the Court of Cassation holds that the necessity of interference with an individual's rights must be assessed not from a formalistic perspective, but in substantive terms. It follows from the foregoing that, when determining its position on an application, the competent court must rely not on the quantity of the materials attached to the application, or, in other words, on the quantitative characteristics of the information submitted by the authority conducting the operational-investigative measures, but rather on the qualitative characteristics of that information. Thus, where an application seeking authorization to conduct operational-investigative measures is accompanied by information which, by its substance, indicates that the person against whom the measures are to be conducted is suspected of having committed a serious or particularly serious offence, and

[7] See: the decision of the Court of Cassation of the Republic of Armenia in the case concerning Sepuh Tadevosyan and Sirun Najaryan, Case No. ԵՇԴ/0073/07/15, dated 18 December 2015, para. 22.

where there is compelling evidence that it is impossible to obtain, by other means, the information necessary for the authority conducting the operational-investigative measures to discharge the functions assigned to it by law, the court, when examining the application, must assess it in terms of whether it provides sufficient justification for the interference with the individual's rights."

The Court of Cassation further observes that adopting the contrary approach could result in situations where a court grants an application for authorization to conduct operational-investigative measures solely on the basis of voluminous but substantively deficient materials attached thereto. This would directly distort the essence of the court's judicial function of reviewing the lawfulness of interference with an individual's rights and would also result in the adoption of an insufficiently reasoned judicial decision. (...)"

In its decision of 18 October 2024 in Case No. ՕՀՍ-56/12 10.2023, the Court of Cassation of the Republic of Armenia articulated the following legal position:

"(...) As regards the legal position referred to by the complainant, as expressed in the Court of Cassation's decision in the case of Ruben Khlghatyan, according to which a report containing information obtained from an operational source, standing alone, does not constitute a sufficient evidentiary basis for establishing the substantiation of an application, and that other factual information must be provided in order to assess the reliability of such a report, it should be noted that the Court of Cassation's conclusion in that case was based on the court's assessment, within the particular proceedings, of the sufficiency of the operational information obtained for the purposes of determining whether the application was adequately substantiated. The Court of Cassation reiterates that requiring the submission of additional factual information corroborating the reliability of operational information contained in the evidentiary basis supporting an application for authorization to conduct operational-investigative measures is inconsistent with the nature and purpose of operational-investigative activities. Nevertheless, in each individual case, the court retains the authority to assess the sufficiency of the operational information when determining whether the application under consideration is adequately substantiated. (...)

As the Court of Appeal correctly noted, in the present case, it was not possible to provide additional factual information for the purpose of assessing the reliability of the operational information obtained. In this regard, the Court of Cassation considers it necessary to emphasize the following. First, the interference with the right to respect for private and family life was sought outside the framework of criminal proceedings. Second, the less intrusive measures undertaken by the authority conducting the operational-investigative activities in the sphere of private

and family life had proved ineffective. Third, having determined that obtaining the necessary information by other means was impossible, the head of the authority conducting the operational-investigative activities applied to the Court of First Instance for authorization to conduct operational-investigative measures entailing a higher degree of interference with the fundamental right in question.

In light of the foregoing, the Court of Cassation concludes that, in the present case, it was the limited range of available investigative tools, coupled with the impossibility of obtaining the necessary information by other means concerning the operational information already obtained, that gave rise to the necessity of conducting the operational-investigative measures sought. It follows that (...) seeking authorization to conduct operational-investigative measures involving a higher degree of interference with a fundamental right was itself aimed at verifying the reliability of the operational information already obtained. In such circumstances, requiring the submission of additional factual information to corroborate the reliability of that information, as noted above, is inconsistent with the nature and purpose of operational-investigative activities."

7. Requirements for Judicial Acts Authorizing Operational-Search Measures

It is noteworthy that, in its case-law, the Court of Cassation also attaches importance to compliance with the formal requirements applicable to the judicial acts at issue. In this regard, the Court of Cassation considers it necessary to address the substantive requirements applicable to judicial acts authorizing interference with an individual's fundamental rights, particularly in the context of ensuring adequate and effective safeguards against arbitrary interference with, or abuse of, the right to respect for private life. Thus, in addition to the general requirements applicable to judicial acts, a judicial act authorizing interference with a fundamental right through the implementation of an operational-search measure must, inter alia, contain a clear indication of the type of measure, the person in respect of whom it is to be carried out, and the period of its validity, and, in certain cases, the place of its implementation. The legal and practical purpose of these qualitative requirements is to delineate the permissible limits and conditions of interference with an individual's fundamental rights, thereby ensuring that such interference is neither arbitrary, unlimited, nor incompatible with the applicable legal framework, while at the same time preserving the possibility of subsequently reviewing the lawfulness of the actions of the persons carrying out the measure. Accordingly, compliance with these requirements constitutes one of the conditions for the lawfulness of permissible interference with an individual's rights.

In light of the foregoing considerations, the Court of Cassation holds that an authorization (decision) of a court permitting the implementation of an operational-search measure that is formulated in excessively vague terms does not, by its very nature, sufficiently circumscribe the interference with an individual's rights to the extent that is "necessary in a democratic society" within the meaning of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This is because, as a consequence of the resulting uncertainty and lack of foreseeability, such an authorization affords the body carrying out the measure broad discretion to determine, inter alia, the place where the measure is to be conducted. In such circumstances, the possibility of arbitrariness and abuse cannot be excluded. In the assessment of the Court of Cassation, this fails to ensure the requisite balance between the public interest and the interests of the individual.[8]

In another case, the Court of Cassation held that the examination of the lawfulness and substantiation of the motion submitted for the conduct of operational-search activities—in the present case, the "Monitoring of Telephone Conversations" operational-search measure—and the examination of the lawfulness and substantiation of the decision rendered by the lower court upon consideration of that motion constitute independent procedural mechanisms under criminal procedure and are not contingent upon one another. Accordingly, where the substantiation of the motion is not called into question, a higher court's finding that the judicial act rendered as a result of judicial oversight over the implementation of an operational-search measure is inadequately or erroneously reasoned cannot, in itself, constitute grounds for finding the motion seeking authorization to conduct such a measure unsubstantiated and for refusing it. In the present case, the Court of Appeal could have dismissed the motion only after examining, on the basis of the motion submitted to the lower court and the materials substantiating it, the factual grounds for granting authorization to conduct the "Monitoring of Telephone Conversations" operational-search measure.

Based on the foregoing, the Court of Cassation holds that the conclusion of the Court of Appeal that the motion submitted by a representative of the National Security Service of the Republic of Armenia seeking authorization to conduct the "Monitoring of Telephone Conversations" operational-search measure in respect of E. Karapetyan should be dismissed on the ground that the judicial act of the Court of First Instance lacked adequate reasoning was unlawful.[9]

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[8] Decision of the Court of Cassation of the Republic of Armenia dated 21 June 2024 in Criminal Case No. 09/08.07.2021.

[9] Decision of the Court of Cassation of the Republic of Armenia dated 21 June 2024 in Criminal Case No. 36110319 B-2186/21 M-8590/21.

8. "Covert Observation" in Places of Detention

In another case, in its decision of 16 June 2023 in Criminal Case No. 22/04.06.2020 M-13904/20, the Court of Cassation first reiterated that the foregoing principles cannot be applied mechanically to exclude the possibility of conducting the "Covert Observation" operational-search measure in a place of detention and to deem unlawful, solely on the basis that it was conducted in such a location, each decision authorizing the implementation of such a measure. In particular, in the case of Gor Sarkisyan, the "Covert Observation" operational-search measure was conducted in the context of public-law relations, where a police officer, acting as a representative of the State, conducted a covert interrogation in his office with an individual who had voluntarily appeared before the authority conducting the proceedings. In such circumstances, the latter did not have, and could not reasonably have had, an expectation of privacy or of the protection of the guarantees safeguarding the confidentiality of his private life.

In this context, the Court of Cassation held that, in each case involving the implementation of the "Covert Observation" operational-search measure in a cell of a place of detention, the applicability of the legal positions expressed by the Court of Cassation in the case of Gor Sarkisyan should not be determined in abstracto, merely by identifying the fact that the relevant measure was carried out in a place of detention constituting a police facility. Rather, such applicability must be determined on the basis of a comprehensive, complete, and objective examination of the case materials, with an assessment of the factual circumstances in concreto, including by establishing whether the "Covert Observation" operational-search measure was conducted in accordance with its nature and intended purpose.

However, in the present case, without assessing in concreto the circumstances characterizing the nature of the legal relationship between the persons subject to surveillance and the relevant authorities at the place of detention of the Yerevan City Department of the Police of the Republic of Armenia, the Court of Appeal deemed the implementation of the "Covert Observation" operational-search measure impermissible solely on the ground that it had been conducted in the relevant cell. The Court of Appeal reasoned that H. Antonyan, while being held in the place of detention, did not have, and could not reasonably have had, an expectation of privacy or of the protection of the guarantees safeguarding the confidentiality of his private life.

In addition to the foregoing, the Court of Cassation reiterates that, although the guarantees of the right to respect for private life afforded to a person in a place of

detention cannot be fully equated with the guarantees of privacy enjoyed by a person in his or her home, the possibility of recognizing, in principle, a minimum level of such guarantees in a place of detention cannot be entirely excluded. Accordingly, through the implementation of the "Covert Observation" operational-search measure, the authority conducting the criminal prosecution may, in principle, exercise surveillance over an individual's right to respect for private life, which falls within the scope of protection of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.Consequently, the reasoning of the Court of Appeal that the "Covert Observation" operational-search measure could not have been conducted in Cell No. 5 of the place of detention of the Yerevan City Department of the Police of the Republic of Armenia, on the ground that H. Antonyan did not have, and could not reasonably have had, an expectation of privacy or of the protection of the guarantees safeguarding the confidentiality of his private life while in the cell, is unsubstantiated.

Addressing the Court of Appeal's finding that, based on the factual information contained in the case materials, the implementation of the "Covert Observation" operational-search measure had been authorized despite the apparent availability of less intrusive means of obtaining the necessary information, the Court of Cassation holds that this finding is well-founded and consistent with the legal position expressed by the European Court of Human Rights in Dragojević v. Croatia. In particular, in that case, the European Court of Human Rights found a violation of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, noting that the application seeking authorization for covert surveillance had not set out factual details based on the circumstances and specific facts of the alleged offense, nor had it demonstrated that the investigation could not have been conducted by means entailing a lesser degree of interference.

The Court of Cassation observes that, in the present case, criminal proceedings had been instituted, and H. Antonyan, as a detained person, was under the control of the authority conducting the proceedings. In such circumstances, the pre-trial investigation body failed to substantiate the absence of any possibility of obtaining the necessary information through the broad range of procedural instruments available under criminal procedure. Instead, both the initiating authority and, subsequently, the Court of First Instance confined themselves to a formal assertion that obtaining such information by other means was impossible.

With regard to the appellant's argument referred to in paragraph 5 of the present decision, it should be emphasized that, when reviewing the lawfulness of a lower court's decision, the scope of judicial review is limited to assessing the factual information examined during the consideration of the motion and the findings

made by the court in support of the necessity of interfering with the individual's right to respect for private life.

However, upon examining the materials of the case, the Court of Cassation observes that no factual information was submitted concerning the procedural actions undertaken in the criminal case during the period preceding the submission of the motion to the court, including information concerning the questioning of H. Antonyan as a suspect. Moreover, neither the written instruction of the authority conducting the proceedings in the criminal case nor the decision to initiate a motion seeking authorization to conduct the "Covert Observation" operational-search measure contains any such information. Accordingly, the aforementioned argument of the appellant cannot be taken into consideration in the circumstances of the present case.

The Court of Cassation further observes that, based on the factual circumstances of the present case, it is apparent that, in the motion seeking authorization to conduct the "Covert Observation" operational-search measure, the competent authority failed to substantiate, in any manner, the purpose for which the measure was to be conducted, the factual circumstances that had rendered its implementation necessary, or the specific circumstances that the competent authority expected to establish through the measure.

The Court of Cassation considers it necessary to reiterate that, having regard to the significantly heightened degree of interference with the individual's right to respect for private life entailed by the "Covert Observation" operational-search measure, it is impermissible to conduct such a measure without substantiating its necessity, merely for the purpose of ensuring the completeness of the investigation of the case. Only where a legitimate aim underlying the implementation of the "Covert Observation" operational-search measure has been established can the court properly assess the proportionality of the interference in question in relation to that aim.[10]

9. Conclusion

Thus, it may be concluded that judicial oversight of operational-search activities constitutes a fundamental mechanism for ensuring the lawfulness of such activities, aimed at maintaining a proper balance between constitutionally protected interests in the implementation of each type of operational-search measure.

[10] Decision of the Court of Cassation of the Republic of Armenia dated 16 June 2023 in Criminal Case No. 22/04.06.2020 M-13904/20.

From this perspective, particular importance attaches to the role of the Court of Cassation as the institution responsible for ensuring the uniformity of judicial practice. A retrospective analysis of the case law of the Court of Cassation demonstrates that the legal positions articulated in its decisions have evolved in accordance with the principle of striking a reasonable balance between public and private interests. This, in turn, suggests that, within the broader philosophical framework underlying the resolution of universal legal issues, more specific and particular questions arising in this field are likewise being addressed and resolved in contemporary judicial practice.

Conflict of Interests

The author declares no ethical issues or conflicts of interest in this research.

Ethical Standards

The author affirms this research did not involve human subjects.

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