

Implementation procedures of the leakage technique and its effects in Algerian criminal law

Amel Bouhafsi¹

¹Djillali Liabes University of Sidi Bel Abbas, Faculty of Law and Political Science, Human Rights and Fundamental Freedoms Laboratory at the University of Abi Bakr Belkaid - Tlemcen - Faculty of Law and Political Science (Algeria).

The E-mail Author: bouhafsi.am@gmail.com

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Abstract:

Among the new methods introduced by the Algerian legislator in the field of criminal investigation, we find the so-called leakage technique. This technique consists in the surveillance of persons suspected of having committed a crime or a misdemeanour by an officer or an agent of the judicial police, under the responsibility of the coordinating officer of the judicial police in charge of the operation, by making them believe that they are accomplices, partners or informers. The aim is to develop effective methods to combat certain types of crime that are characterised by their danger and complexity, such as drug-related crime, transnational organised crime, crimes related to automated data processing systems, money laundering, terrorism and crimes related to the legislation governing financial transactions, as well as corruption-related crimes.

Keywords: Investigation, procedure, leak, criminal law.

Introduction:

In the context of the fight against certain serious crimes, the Algerian legislator has adopted specific procedural measures aimed at combating the emergence of criminal activities in society as a result of global developments. One of these procedural measures is the leakage technique, which is considered a specialised method of investigation and inquiry used in complex crimes such as terrorism, money laundering, corruption and organised crime. In this technique, a police officer or a judicial police agent, under the responsibility of the judicial police coordinating officer in charge of the operation, observes persons suspected of having committed a crime or an offence by making them believe that they are accomplices, partners or informers. The aim is to devise

effective methods of combating certain types of crime characterised by their dangerous and complex nature. The Algerian Code of Criminal Procedure has undergone several amendments, including Law No. 06-22 of 20 December 2006, which introduced this new method of investigation. In this study, we will examine the main procedures related to the implementation of the leakage technique in criminal investigations.

Section 1: Identifying the procedures for implementing the leakage technique.

Section 2: Exploring the implications of the leakage technique.

First section: Procedures for implementing the leakage procedure.

The Algerian legislator has surrounded the process of leakage with a series of procedural and regulatory conditions. These conditions can be found in most of the articles dealing with leakage, in particular articles 56 bis 33 to 56 bis 39 of the Algerian Code of Criminal Procedure. These conditions are designed to ensure the success and smooth operation of the leakage process, while guaranteeing the safety of the undercover agent and achieving the stated objectives without causing any damage or loss. This is because the leakage process is inherently risky and involves significant dangers, particularly for the undercover agent, whose life may be at risk if his or her true identity is revealed.

Furthermore, the leakage process is relatively new and modern in the context of judicial control. It is characterised by its technical and practical aspects. It was therefore imperative for the Algerian legislator to give greater importance to the legal framework. For example, the legislator did not explicitly mention the necessary qualifications for the undercover agent or the organisation responsible for the leakage operation. It is assumed that a specialised group of judicial police officers and agents should have high physical and mental qualities that qualify them for such tasks, especially considering that the field of these crimes, such as cybercrime, requires a good understanding of the technological aspects involved. In addition, there are no financial incentives or security guarantees, such as a change in the undercover agent's place of residence or employment, with regard to the consequences that arise after the end of the leak operation.

First section: Stages in the implementation of the leakage technique.

Due to the secretive nature of the leakage operation, it is difficult, if not impossible, for the undercover agent to undertake the assigned task of

infiltrating a criminal organisation or group of criminals without making the necessary preparations to ensure his safety and the success of the operation.

The implementation of the leakage technique is based on initial preparations and the use of necessary mechanisms. The process passes through the stage of preparation for execution (first branch), followed by the stage of infiltration and penetration (second branch).

First branch: Stage of preparation for the execution of the infiltration technique.

The coordinating unit, together with the undercover agent, is responsible for carrying out some preliminary preparations. These preparations include, firstly, an assessment of the criminal environment in which the infiltration will take place and, secondly, the selection of the appropriate person to carry out the operation.

Firstly, an assessment of the criminal environment for infiltration.

This is done through key points relating to the human element. It is assumed that there should be a detailed understanding¹ of the individuals that make up the criminal organisation, including their experience, activities, criminal records, age, gender and more. In addition, it may be necessary to examine the criminal activities to ensure that they fall within the scope of the offences listed in Article 65 bis 5 of the Algerian Code of Criminal Procedure. It is important to determine whether the organisation can be described as a criminal association, a terrorist group, a criminal network operating in the national territory or internationally or involved in cross-border activities².

It is also necessary to have a general knowledge of the criminal environment, such as its history, location, specificity and specialisation in a particular field³.

Therefore, the study of the criminal environment is primarily aimed at understanding what happens in the different criminal environments, which are characterised by a well-organised structure and the use of a coded language

¹ Look at Article 65 repeated from Order 06/155, which includes the Algerian Criminal Procedure Law, stating: 'Arranging... or taking pictures of an individual or several individuals present in a specific place.'

² Khouloud Ghraïebia, *Judicial Supervision over Leak Mechanisms*, 1st edition, Dar Al-Bahith Damascus Press, 2018, p. 45.

³ Mohammed Hazzit, *Examining Magistrate in the Algerian Judicial System*, Ph.D., Dar Huma, Algeria, 2008, p. 73.

among their members to carry out their criminal plans in specific crimes authorised for infiltration⁴.

On this basis, understanding all these elements will help to develop an effective methodology for the success of this technique and ensure the safety of the undercover agent⁵.

Secondly, the selection of the appropriate person to carry out this procedure.

As the Algerian legislator has not specified any particular characteristics for the infiltrator, the judicial police officer has a discretionary power to choose the appropriate person. Logically, it is assumed that the nature of the crime requires it.

For example, for crimes related to computer data processing systems, it is assumed that the person should have exceptional knowledge of computer systems and how to operate them. Of course, this technical knowledge can only be achieved through training for investigators and those involved in the field of informatics⁶.

From this point of view, the infiltrator is trained. The same applies to crimes related to terrorism, where the infiltrator must be familiar with the types of weapons, their methods of use and their level of danger⁷.

It is necessary for the infiltrator to have a knowledge of certain foreign languages, especially when the crime involved in the infiltration has the characteristics of transnational organised crime involving persons of several nationalities. This concerns, for example, the professional aspect.

As far as the psychological and physical aspects are concerned, it is assumed that the infiltrator's behaviour should be in line with the operation or his ability to assume criminal characteristics should be in line with the operation and the nature of the crime. Not to mention the psychological traits and qualifications that match the operation and contribute to its success⁸.

⁴ - The Virtue of Living: Commentary on Criminal Procedure Law between Theoretical and Practical Aspects, Dr. T, Dar Al-Badr, Algeria, 2008, p. 130.

⁵ - Kholoud Ghaybia, same reference, p. 45.

⁶ - The same reference, p. 46.

⁷ - Dawoodi Mujarrab, Special Methods for Research and Investigation in Organized Crime, Doctoral Thesis in Public Law, University of Ben Yousef Ben Khedda, Algeria, 2015-2016, p. 87.

⁸ - The same reference, pp. 88-89.

The second aspect: The infiltration and penetration phase.

After completing the preparatory phase of the infiltration operation and carrying out all the necessary preliminary procedures and field preparations, the infiltrator proceeds with the penetration of the criminal groups. Firstly, they use a false identity. Secondly, they use legitimate technological means.

Firstly Infiltration of the infiltrator within groups:

the infiltrator's penetration of criminal groups varies according to the nature of the crimes and the activities carried out by these groups. The aim is for the infiltrator to enter and integrate into the organisation without arousing suspicion⁹.

This stage is considered one of the most dangerous in the infiltration process because of its sensitivity, as members of criminal organisations are very cautious and intelligent. They are suspicious of any new person entering their midst¹⁰.

Therefore, they subject each new member to rigorous psychological and physical tests that would be difficult for an ordinary person to endure. This includes harsh and demanding training to increase their ability to withstand challenges¹¹.

Therefore, the law allows the infiltrator to commit certain criminal acts without facing criminal punishment in order to protect his cover and prevent his true identity from being revealed.

The purpose of infiltrating the target criminal environment is to gather information about the crime and its elements. This involves identifying the role of each individual within the group, understanding their criminal intentions and objectives through observation and recording their every move. It is the task of the undercover officer to deepen the investigation and gather precise details of the activities and operations of these criminal groups, both individually and collectively¹².

⁹ - Dawadi Mujarrab, same reference, p. 125.

¹⁰ - Abdulqader Rweis, Special Research and Investigation Methods and Their Legal Basis in Criminal Evidence, Algerian Journal of Law, Issue 03, University of Mostaganem, June 2017, p. 42.

¹¹ - Kholoud Ghaybia, same reference, p. 60.

¹² - Abdullah Ouhabia, Explanation of Algerian Criminal Procedure Law, Investigation and Verification, Dar Huma for Algerian Publishing, 2009, p. 281.

Secondly, the use of a false identity by the infiltrator.

The legislator allows a police officer or a judicial police officer authorised to infiltrate the targeted criminal environment to assume a fictitious identity that bears no relation to his or her real identity. This allows him to integrate into the criminal elements as an actor, partner or collaborator. This approach helps to uncover many facts that would be difficult to discover if the infiltrator revealed their true identity. The use of false information includes inaccurate first name, surname, date and place of birth, place of residence, distinguishing marks and occupation (such as driver, blacksmith, gardener, etc.) based on the specific criminal environment being infiltrated. Forged documents may also be provided by the persons involved in the operation, after notification to the competent judicial authority, which supervises and authorises the operation¹³.

On this basis, infiltration is based on deception and disguise in order to identify and arrest the perpetrators and accomplices. Article 65, repeated 12, of the Code of Criminal Procedure defines infiltration as follows: "The act of a judicial police officer, under the responsibility of the coordinating judicial police officer, of observing persons suspected of having committed a crime or an offence, by pretending to be an actor, a partner or an associate of these persons".

In the light of this definition, the implementation of an infiltration operation includes the following aspects:

1- A police officer and a judicial police officer as the perpetrator:

This description raises the legitimate question of the identity of the perpetrator. It is necessary to clarify this by referring to the definition of the perpetrator in Article 41 of the Algerian Penal Code: "The perpetrator is considered to be anyone who directly contributes to the commission of the offence or is willing to commit the offence by means of donation, promise, threat, abuse of authority or jurisdiction, manipulation or criminal deception.

The perpetrator of a crime is the person who directly participates in the act of committing the crime, whether the execution of this act is individual or within a criminal group. The perpetrator performs the act willingly and in a manner that makes him or her visible during the crime¹⁴.

¹³- Hamza Al-Qurayshi, Modern Means of Research and Investigation in Light of Law 06/22, Comparative Study, Master's Thesis in Legal and Administrative Sciences, Faculty of Law and Political Science, University of Kasdi Merbah, Ouargla, 2011-2012, p. 94.

¹⁴- The access date is 20/05/2023 at 18:00. <http://www.startimes.com>

According to the text of article 65, recital 12, of the Algerian Code of Criminal Procedure, the infiltrator who carries out this operation may, by means of camouflage, assume the role of a principal actor and carry out the acts provided for in article 65, recital 14, of the Code of Criminal Procedure, without being held criminally responsible for these acts¹⁵.

2- Officials or members of the judicial police as accomplices:

According to Article 42 of the Algerian Penal Code¹⁶, the infiltrator contributes indirectly to the crime. This means that they do not participate directly in the commission of the crime, but limit their role to assisting and supporting the perpetrator or perpetrators in furthering their criminal purpose, which is to achieve a specific criminal result by providing the resources and means that facilitate the commission of the crime¹⁷.

And the infiltrator is considered an accomplice under Article 43 of the Algerian Penal Code, which states: "The accomplice shall be punished in the same way as anyone who, with knowledge of the criminal behaviour of one or more criminals involved in theft, violence against state security, public security, persons or property, habitually provides them with accommodation, shelter or a meeting place".

Therefore, the authorised judicial police officer conducting the infiltration operation and the accompanying agent are considered partners in the eyes of the suspects, since they provide them with material and moral support in the implementation and execution of their criminal plans. However, according to the law, they are not criminally liable for these acts.

3- Officials or infiltrating police officers as accomplices: The Algerian legislator defines complicity in Article 387 of the Penal Code as follows: "Anyone who intentionally conceals, in whole or in part, objects stolen, specified or obtained from a crime or an offence...".

Thus, they are not subject to the punishment of article 387 of the Penal Code, which punishes concealment, as long as the legislator has legitimised their

¹⁵ - Sara Qadri, Special Investigation Methods in Criminal Procedure Law, a supplementary thesis for the requirements of the academic Master's degree in General Business Law, Faculty of Law and Political Science, University of Kasdi Merbah, Ouargla, 2013-2014, p. 26.

¹⁶ - Article 41 of the Criminal Procedure Code states: 'An accomplice in the crime is considered anyone who does not directly participate but assists in any way or aids the perpetrator or perpetrators in committing preparatory or facilitating acts with knowledge of that.

¹⁷ - Abdullah Ouhabia, Explanation of Algerian Penal Code, General Section, Dar Huma for Algerian Publishing, 2009, pp. 299-307.

actions as an exception to the general rules. This exemption is the same as that provided for in Article 43 of Law No. 06/01 on the prevention and combating of corruption¹⁸.

Article 65, repeated 12, of the Code of Criminal Procedure allows the infiltrator to conceal the items obtained during the performance of their duties, if the necessity of investigation and inquiry requires it, without imposing criminal liability on them for committing this act¹⁹.

Thirdly, the legality of the technical means used:

Having infiltrated the criminal organisation, the infiltrator gains the trust of the members within that environment. This is where their task begins, which is to collect all kinds of evidence that can incriminate the members of the infiltrated group. In most cases, the infiltrator will need modern, advanced and sophisticated technological means to gather this evidence.

The use of such means and techniques is inherently prohibited by the principle of the inviolability of private life, which is recognised by religious laws, international human rights conventions and enshrined in the Algerian Constitution²⁰. These means include, but are not limited to:

1- Interception of wired and wireless communications:

From the wording of Article 65, repeated 5, of the Code of Criminal Procedure, it can be concluded that the interception of communications refers to the interception, recording or copying of communications transmitted through wired or wireless channels²¹. These communications consist of producible data that can be distributed, stored, received and displayed. The legislator did not attach any importance to the means of interception itself, which may be either conventional or the latest technology developed in this field.

At a meeting in Strasbourg on 6 October 2006, the Parliament's Committee of Experts on Technical Investigation Methods and their Relationship to Terrorist

¹⁸ - Article 43 of Law 06/01 related to the Prevention and Combating of Corruption states: 'Anyone intentionally concealing all or part of the proceeds obtained from one of the crimes stipulated in this law shall be punished with imprisonment from two to ten years and a fine ranging from 200,000 DZD to 1,000,000 DZD.

¹⁹ - Shams Eddine Mahdi, the aforementioned reference, p. 74.

²⁰ - Article 39 of the Algerian Constitution, issued on November 28, 1996, Journal Number 76, amended and supplemented, issued on December 8, 1996.

²¹ - Ahsen Bousguia, Judicial Investigation, Dar Huma, Algeria, 2010, p. 113.

Acts defined interception of communications as follows "It is a secret surveillance of wired and wireless communications in the context of the investigation and proof of crimes, as well as the gathering of evidence and information on persons suspected of having committed or participated in the crime²²".

Based on the above, it is possible for an infiltrator to use the wire and wireless communication interception mechanism in the course of carrying out an infiltration operation.

2- Voice recording:

The Algerian legislator did not provide a specific definition for voice recording. However, it is mentioned in Article 65, repeated 02, of the Algerian Code of Criminal Procedure, which states that technical arrangements can be used without the consent of the individuals involved to capture, record, and transmit speech, whether in private or secret, by one or more persons in private or public places.

The voice recording that is relevant here is the one made by the infiltrator in the field of criminal evidence. Therefore, recordings made by individuals among themselves do not fall within the scope of criminal proceedings, as they are not made in connection with a criminal case initiated by the judicial authorities with the intention of seeking the truth. In addition, recordings of conversations that do not violate the rights of those being recorded, such as telephone, radio or journalistic conversations, are outside the scope of the investigation if they are made with the consent of the parties involved²³.

3- Photography:

This means can also be used by the infiltrator within the framework of investigations and inquiries. The process of taking photographs is considered a modern technique introduced by the legislator for investigating corruption crimes through various types of photography. It helps to uncover these crimes and monitor the criminal's activities, as the detailed description provided by the infiltrator may not be as effective as photographic evidence. Photography is

²²- Khawla Abbasi, *Modern Means of Criminal Evidence in Algerian Law*, a supplementary thesis for the requirements of the Master's degree in Law, Faculty of Law and Political Science, University of Mohamed Khider, Biskra, 2013-2014, p. 18.

²³- Hamza Qureshi, the aforementioned reference, p. 104.

particularly important in cases where the visual aspect of the evidence can be better understood through accurate representation²⁴.

These operations are authorised by the Public Prosecutor's Office in cases where criminals are caught in the act or during the preliminary investigation under his direct supervision. The authorisation is addressed to the judicial police officer. The text of article 65, paragraph 8, of the Algerian Code of Criminal Procedure reads as follows: "The public prosecutor or the judicial police officer to whom the authorisation has been granted, or the investigating judge or the delegated judicial police officer, may entrust the technical aspects of the operations referred to in article 65, paragraph 5, to any qualified person from a public or private body responsible for wired or wireless communications.

The second requirement: Obligations of the infiltrator.

The judicial police officer in charge of the infiltration operation is the main person authorised by law to carry out the necessary procedures related to the infiltration. These procedures include the coordination of the operation (first branch), the giving of judicial testimony (second branch) and the preparation of a report upon completion of the infiltration operation (third branch).

First branch: Coordination of the operation.

Coordination involves the judicial police officer in charge of planning and strategising the operation. He assigns another judicial police officer or an assistant judicial police officer to observe the persons suspected of being involved in the commission of a crime and to make them believe that they are accomplices.

With reference to article 65, repeated 12, of the Algerian Code of Criminal Procedure, we note that the judicial police officer coordinates the infiltration operation after informing the supervising judicial authority, which has issued the authorisation. They provide the infiltrator with false identity documents²⁵.

The process of writing reports on the operations carried out by the infiltrator allows for flexibility and does not require a specific method, as long as the infiltrator has complied with the provisions of the law and its procedures. Even if they deviate from what was previously agreed, as long as it was deemed

²⁴- The process of photography or capturing images is expressed in the Algerian Criminal Procedure Code in the text of Article 65 bis 9 with the phrase 'capture.

²⁵- Article 65 bis 12 of the Algerian Criminal Procedure Code.

necessary and within the scope of their responsibilities, the infiltrator will not be held criminally liable²⁶.

When the fixed duration of the operation, estimated at four months, comes to an end, the police officer in charge informs the public prosecutor or the investigating judge who issued the authorisation. They will then decide whether to extend or suspend the operation, depending on the content of the reports and the progress of the infiltration operation.

In order to preserve confidentiality, only the judicial police officer in charge is entrusted with the task of filing the authorisation in the case file at the end of the operation²⁷.

In the second branch: Giving judicial testimony.

The judicial testimony referred to in article 65 repeated 18 of the Algerian Code of Criminal Procedure is not considered a compulsory duty for the judicial police officer. It is rather discretionary. The legislator has indicated that "the judicial police officer in charge of the infiltration operation may be heard as a witness to the operation, in addition to others".

This is because the judicial police officer is responsible for coordinating the infiltration operation and supervising all its stages. They constantly receive information from the person carrying out the operation, and reports are drawn up on the basis of this information. These reports can be presented before the competent judge or the investigating judge²⁸.

After the completion of the operation and during the stages of judicial investigation, the responsible judicial police officer is heard as a witness to the operation, without hearing the person who carried out the operation. This is done for security reasons and because the judicial police officer is the one authorized under their name, meaning their identity is mentioned as they directly receive the authorization. Additionally, the officer responsible for the operation is the one in charge of coordinating the operation, which is conducted under their management and responsibility.

Third Branch: Preparing a report after the completion of the infiltration operation.

²⁶- Article 65 bis 14 of the Algerian Criminal Procedure Code.

²⁷- Article 65 bis 15/3 Q.C.C.

²⁸- Ammar Qadri, Practice of Judicial Supervision in Algeria, Dar Huma for Publishing and Distribution, Algeria, 2015, p. 191.

Police reports can be defined as documents that contain information and evidence obtained through investigation, observation, search, technical and practical deductions²⁹.

According to article 65 repeated 13 of law no. 06/22, which amends and supplements the Algerian Code of Criminal Procedure, the judicial police officer in charge of coordinating the infiltration operation is obliged to draw up a report for each operation and submit it to the competent public prosecutor³⁰. During the course of the infiltration operation, the officer is also required to document all the elements necessary for the investigation of the crimes for which the operation is carried out. The written report should be detailed and accurate, covering all relevant aspects of the operation. The officer must ensure that the report provides a chronological account of the entire operation, while at the same time providing all relevant information, such as criminal acts, in a thorough manner³¹.

Therefore, the judicial police officer in charge of coordinating the infiltration operation, in accordance with article 65 repeated 13 of law no. 06/22 amending and supplementing the Algerian Code of Criminal Procedure, is obliged to draw up a report for each operation and submit it to the competent public prosecutor. In addition, during the course of the infiltration operation, the officer is required to prepare a detailed and precise report containing all the elements necessary to investigate the crimes for which the operation is being conducted. The report should accurately describe all aspects of the operation in chronological order and include all relevant information, such as criminal acts.

Because of the importance of the report, the Algerian legislator obliges the authorised judicial police officer in charge of coordinating the infiltration operation to draw it up personally and to seal it with his own seal. This is because the operation is carried out under his responsibility and coordination. The report becomes a sequential film of events and facts based on observations and investigations during the entire course of the infiltration operation, from its beginning to its end.

The officer in charge of the operation describes the course of the operation in his report, which is then sent to the investigating judge or to the public prosecutor, if he has authorised the operation. This report is then included in

²⁹- Nasreddine Marouk, Lectures on Criminal Evidence, 6th edition, Part 2, Dar Huma, Algeria, 2016, p. 215.

³⁰- Khawla Abbasi, the aforementioned reference, p. 29.

³¹- Ahsen Bousguia, the aforementioned reference, p. 115.

the procedural file, which contains the evidence obtained through the observations made during the infiltration operation.

The second theme: The consequences of the infiltration mechanism.

At the end of the infiltration operation, the investigating authorities, led by the public prosecutor and the investigating judge, are able to uncover the essential details of the crimes committed. They can produce reports that serve as evidence and provide an in-depth understanding of what is happening in the criminal hot spots. These reports are submitted to the judicial authorities, who are free to evaluate the various reports submitted to them, ensuring that they meet the required formal and objective conditions. Any violation of these conditions undermines the value of the reports.

The testimonies of the witnesses, obtained at great risk to themselves, are also presented to the judge presiding over the case. All these efforts are aimed at achieving the primary objective of the Public Prosecutor's Office, in particular the general objective of criminal evidence, which is to seek and reveal the truth.

In this context, it is important to note the serious risks that infiltrators may face in their own lives, and possibly in the lives of their family members, once the operation has been completed. For this reason, the legislator has provided them with protection in the form of sanctions laid down in Article 65, repeated 16, of the Algerian Code of Criminal Procedure. This article provides for penalties, including prison sentences of between two and five years and fines of between 50,000 and 200,000 Algerian dinars, for anyone who discloses the identity of judicial police officers. If such disclosure leads to acts of violence, assault or harm against these persons, their spouses or their immediate relatives, the penalty increases to imprisonment for between five and ten years and a fine of between 200,000 and 500,000 Algerian dinars. Furthermore, if such disclosure leads to the death of one of these persons, the penalty shall be imprisonment for a term ranging from ten to twenty years and a fine ranging from 500,000 to 1,000,000 Algerian dinars.

The legislator has also provided additional protection by not requiring the infiltrator to testify personally in order to save his life. Instead, the responsibility is limited to the judicial police officer in charge of coordinating the operation, who testifies under his own responsibility.

First request: Legal liability of the infiltrator and his protection.

Given the nature of the infiltration operation and the inherent dangers for the infiltrator, the Algerian legislator has provided for legal protection to ensure his safety during and after the operation. We will discuss both the legal protection of the infiltrator during the operation and the legal protection after the operation.

First section: Determining the legal liability of the infiltrator.

The law imposes personal liability on members of the judicial police for the consequences of their mistakes when they reach a certain level of seriousness. The mistake may be a civil one, leading to civil liability, or an administrative one, leading to disciplinary liability. It could also be a criminal error, leading to criminal liability. However, there may be no liability in cases of exception.

Firstly, the determination of legally justified actions:

According to Article 06 repeated 20 of the Penal Code, the legislator explicitly states the actions and operations that the infiltrator can carry out without incurring criminal liability for these acts. These include:

- * Acquisition, possession, transport, delivery or transfer of :
 - Materials obtained from or used in the commission of offences.
 - Money obtained from or used in the commission of an offence.
 - Products obtained from or used in the commission of an offence.
 - Documents obtained from or used in the commission of an offence.
 - Information obtained from or used in the commission of an offence.
- Used or made available to the perpetrators of these crimes:⁽¹⁾
 - Means of a legal nature.
 - Means of a financial nature.
 - Means of transport.
 - Means of storage.
 - Means of housing.

- Means of preservation.
- Means of communication

Through these actions and operations, it can be seen that the legislator has provided the infiltrator with all the material and legal means that can be used in the commission of crimes or made available to the perpetrators of these crimes. The purpose of granting these powers to the infiltrator, by means of which he provides support and assistance to the targeted criminal group, is to gain their trust and dispel any doubts as to the infiltrator's true identity and true objective.

Secondly, cases of exemption from criminal liability:

Article 39 of the Criminal Code states: "There is no crime unless the act is commanded or permitted by law, or if the act is compelled by necessity in the case of legitimate self-defence or defence of others or property, provided that the defence is proportionate to the seriousness of the attack"³².

With regard to the amendment of Law No. 22/60 of 22 December 2006, specifically in Article 65, repeated 14, it is stated that judicial police officers and their authorised representatives who carry out infiltration operations shall not be criminally liable for the acts referred to in this Article.

Therefore, the legislator has included the acts that constitute crimes committed by the infiltrator during his mission within the scope of Article 01 of the Criminal Code, which states: "There is no crime unless the act is ordered or authorised by law". This makes the infiltrator completely exempt from criminal liability.

In addition, Article 06, which repeats Article 22 of the Code of Criminal Procedure, affirms that it is not permissible, under penalty of nullity, for these acts to constitute incitement to commit a crime. Incitement refers to influencing and directing someone's will and intentions in the desired direction by the instigator.⁽²⁾

According to Article 02 of the Algerian Penal Code, "the instigator is considered an accomplice to the crime". Similarly, article 06 of the same code stipulates that the instigator shall be subject to the punishment prescribed for the crime.

³²- Article 39 in Chapter Four of the First Section of the First Book of the Penal Code under the title 'Justified Acts.

With regard to the interpretation of Article 06, which repeats Article 22 of the Code of Criminal Procedure, there are two possible interpretations, as stated in many books explaining the Code of Criminal Procedure:

The first interpretation is based on the notion that the judicial police officer or agent does not engage in instigatory acts that would incite and push individuals to commit crimes. This interpretation implies that the infiltrator does not incite or instruct the detained persons to commit crimes.

The second interpretation is based on Article 42 of the Criminal Code, which considers a person to be an accomplice if he or she has not directly participated in the crime, but has in some way assisted or supported the instigator or perpetrators of incitement with knowledge of their actions. According to this interpretation, the acts referred to in articles 77 and 84 of the Code of Criminal Procedure, such as the acquisition or possession, or the use or placing of certain means under the control of the perpetrators of these crimes, using an identity or persona other than their police identity, are not considered as incitement.

Based on the considerations you mentioned, the second interpretation seems more accurate. Here are the reasons:

The acts referred to in article 06, paragraph 20, are essentially acts of instigation, which help and facilitate the task of criminals. Therefore, the legislator considered that these acts, during the infiltration operation, do not constitute incitement to commit the crime.

The infiltration operation is based on information about a crime or an investigation into a crime that has been committed. The environment targeted in the infiltration operation is criminal in nature, so it is not logical for the operation to target an environment unrelated to criminal activity.

The nature of the infiltration operation is characterised by privacy compared to other operations carried out by judicial police officers and their agents. It is also limited in time. Although the infiltrator carries out the acts mentioned³³, which are essentially illegal and incitement, the nature of the operation itself does not consider these acts as incitement and the infiltrator is not responsible for these acts.

Branch 2: Legal protection for whistleblowers.

³³- Samia Boulafa, Sassi Mabrouk, Innovative Methods in Criminal Investigations, Al-Bahith Journal for Academic Studies, Issue 09, Batna 1 University, June 2016, p. 402.

With regard to the second aspect, the legal protection of the infiltrator, the Algerian legislator has surrounded the infiltration operation with a series of measures to ensure the safety of the infiltrator during and after the operation

Because of the nature and danger of infiltration operations, and in order to facilitate the infiltration of groups in order to uncover crimes, the Algerian Code of Criminal Procedure has provided special protection to ensure the safety of the infiltrator. Firstly, the legislator has exempted the infiltrator from criminal liability for offences committed in the course of his duties and the mission assigned to him. The infiltrator is allowed to use an assumed identity and to maintain complete confidentiality by concealing his real identity when assuming the undercover identity during the infiltration operation at any stage of the proceedings. The legislator has provided for criminal sanctions for violation of this prohibition and has extended this protection to the infiltrator's family members. Furthermore, the legislator has provided additional protection by preventing the infiltrator from testifying in person in order to protect his life. Only the judicial police officer coordinating the operation is responsible for their testimony. This indirect protection is limited to the testimony of the coordinating officer, which (secondly) guarantees the safety of the infiltrator.

First: Criminalizing the disclosure of the whistleblower's identity.

the criminalisation of revealing the identity of the infiltrator is based on the understanding that infiltration is a dangerous procedure that exposes the infiltrator to risks. However, the legislator has created mechanisms to protect the infiltrator by allowing the police officer or judicial police agent to use a false identity instead of his real one. They are also authorised to carry out the actions specified in Article 65 repeated 16/1 of the Code of Criminal Procedure, both before, during and after the infiltration operation. Revealing the identity of the infiltrator would jeopardise the operation and put the infiltrator in danger.

If the operation is terminated or the period specified in the infiltration licence expires without extension, the infiltrator may continue his activities referred to in Article 65 for a period deemed necessary and sufficient to terminate the infiltration operation, under conditions that ensure his safety, without incurring criminal liability. However, this period should not exceed four months, in accordance with article 65 repeated 17/1 of the Code of Criminal Procedure.

If the four-month period of the operation expires and the infiltrator is unable to withdraw in conditions that guarantee his safety, the judicial police officer in charge must inform the judge who issued the authorisation as soon as possible. The judge may authorise an extension of the operation for a maximum of four

months, according to article 65 repeated 17/2. This indicates that the legislator has extended the deadlines for the infiltration operation. On the basis of this information, the legislator has provided special protection to ensure the maintenance of security and safety.

The legislator has allowed the judge who issued the licence for the operation to extend the time limits of the operation a maximum of twice, in order to allow the infiltrator to continue his work for the necessary and sufficient time to stop the operation in conditions that ensure his safety, without incurring criminal liability for the actions carried out during this period.

It should be noted, however, that there is some ambiguity in the legal texts regarding the duration of the operation and its extensions³⁴.

The period of four months has been extended to eight months, as stated in the second paragraph of Article 65 repeated 17 of the Code of Criminal Procedure. It states that: "If the four-month period expires without the infiltrator being able to cease his activities in conditions that guarantee his safety, the judge may authorise an extension for a maximum of four months.

Secondly: the infiltrator cannot be heard as a witness

The legal protection granted to the infiltrator continues even after the end of the operation. During the stages of the judicial investigation, the statements of the judicial police officer in charge of the infiltration operation are heard and he is the only witness to the operation. This is in accordance with article 65 repeated 18 of the Code of Criminal Procedure³⁵.

The Algerian legislator has made an exception for the infiltrator who carried out the operation, even though he is the actual witness in the case of the criminal acts committed during his operation. This exception is based on security considerations and the need to preserve the confidentiality of the infiltrator's identity. Revealing the identity of the person who carried out the operation would put them and their family in constant danger, as it would lead to retaliation from the criminal group that trusted and collaborated with them.

³⁴ - Article 65 bis 15 of the Criminal Procedure Code states: '... and this authorization specifies the duration of the infiltration process, which cannot exceed 04 months.' The legislator then refers to Article 65 bis 17 of the Criminal Procedure Code, which states: 'The infiltrating agent may continue the activities mentioned in Article 65 bis 14 for a necessary and sufficient period to stop surveillance operations under conditions ensuring their safety, without being responsible, provided that this period does not exceed four months.'

³⁵ - Fawzi Amara, the aforementioned reference, p. 250.

If their identity is revealed, they may be targeted for revenge by the criminal group or others associated with it.

Thirdly: if the infiltrator is attacked, the infiltrator will be punished

One of the protection measures provided for the person carrying out the infiltration operation is the imposition of penalties, as stated in Article 65 repeated 16 of the Code of Criminal Procedure, against anyone who reveals the identity of the infiltrator or assaults him or his family. The article reads as follows

- Anyone who discloses the identity of the person shall be punished by imprisonment for a term of two to five years and a fine of between 50,000 and 200,000 Algerian dinars.

- Anyone who causes the disclosure of the identity of the infiltrator, resulting in violence, assault or injury to the infiltrator, his spouse, children or close relatives, shall be punished by a term of imprisonment of between five and ten years and a fine of between 200,000 and 500,000 Algerian dinars.

- Anyone who causes the disclosure of the identity of one of the aforementioned persons resulting in their death shall be punished by imprisonment for a term of ten to twenty years and a fine of between 500,000 and 1,000,000 Algerian dinars, without prejudice to the provisions of the first chapter of the second section of the third book of the Penal Code, which deals with crimes and offences against persons³⁶.

The second request: Duration of the infiltration mechanism

If the legal conditions for infiltration are met, the competent judicial authority will grant permission. The granting of the authorisation directly involves the execution of the infiltration operation by an officer or agent of the judicial police, in accordance with the provisions of the Code of Criminal Procedure, which establishes a specific period of time in accordance with Article 65 repeated 5, paragraph 3 of the Code of Criminal Procedure. The conditions and extensions of this period are regulated by article 65, paragraph 17, of the same law (first section). The infiltration operation may, however, be terminated before the end of the specified period if the objectives pursued by resorting to this measure have been achieved.

First section: Legal suspension of the infiltration mechanism

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The role of the Public Prosecutor does not end with the authorisation of the infiltration operation. The Public Prosecutor is responsible for determining the period of time considered sufficient for the success of the operation, provided that it does not exceed four months. In addition, when the investigating judge, whatever the method used, considers it necessary to use the infiltration method, he has the discretion to determine the duration he considers appropriate and sufficient to achieve the objectives of the infiltration operation, without exceeding the four-month limit³⁷. This is based on the provisions of Article 65 repeated in 15/3: "The authorisation granted shall specify the duration of the infiltration operation, which shall not exceed four months".

The infiltrator's mission ends initially by suspending the infiltration operation before the end of the period laid down by law, on the basis of an order issued by the competent authority that authorised it, if it deems it pointless to continue. Alternatively, the mission ends with the expiration of the period of infiltration established by law, without extension, as stated in article 65, repeated 15/5, which allows the judge who authorised the operation to order its suspension at any time before the established period. This leads us to say that the lack of seriousness on the part of the infiltrator, whether due to the expiry of the set time limit or because the competent judge deems this approach to be futile, may put the life of an officer or agent of the judicial police at risk due to the possible disclosure of their true identity by the criminal group engaged in unlawful activities in order to carry out their plans. For this reason, the legislator has included the following provision in article 65, which is repeated in article 17 of the Code of Criminal Procedure "If it is decided to suspend the operation, or at the end of the period specified in the infiltration licence, and if it is not extended, the infiltrating agent may continue the activities referred to in Article 65, recital 14, for a period necessary and sufficient to complete the surveillance operations under conditions that ensure his safety, without being able to cease his activities under safe conditions. The judge may authorise an extension of up to a maximum of four months, which shall be considered as an exception in order to ensure the protection of the infiltrator until he is able to cease his activities and withdraw in appropriate and safe conditions. However, the duration of the continuation of such actions and activities should not exceed four months³⁸.

On this basis, the suspension of the infiltration operation or the expiration of its duration without extension does not prevent the infiltrator from continuing his activities within the criminal cell without incurring criminal liability. However,

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³⁸- Amina Rikab, *Ibid.*, p. 135.

this is subject to the condition that the Public Prosecutor or the Investigating Judge in charge of the operation is informed as soon as possible and urgently of the need to continue the operation in order to safeguard their safety and life. However, this can only be done within a maximum period of four months by issuing another authorisation to extend the operation.

Therefore, the extension of the infiltration licence for a further four months is subject to the discretion of the infiltrators responsible for carrying out the operation, if they are unable to fulfil the tasks assigned to them and cease their activities under safe conditions, as well as to the discretion of the issuing judicial authority.

The legislator has allowed the extension of the infiltration licence for a further four months in order to uncover the truth. At the end of the eight-month period, the infiltration can be extended indefinitely. On the other hand, it is important not to set a specific time limit when it comes to ensuring the safety of the infiltrator, as setting such a time limit could put his life at risk³⁹.

With regard to this important issue of the safety of the agent, we can see that the legislator has in fact undermined the rights of the assistant who risks his own life and safety in order to maintain public order. This is evident in the limitation imposed by the competent judge on the extension of the operation to only two times, for a maximum of 8 months, which contradicts the wider discretion granted to uncover the truth.

Second Branch: Successful conclusion of the leakage.

On the other hand, in the case of a successful infiltration, the legislator has set a specific time limit for the completion of the infiltration operation, initially set at 4 months, which can be extended indefinitely. It is also possible to suspend the operation with the authorisation of the competent authority, even if the time limit has not expired. The purpose of this measure is for the infiltrator to penetrate the criminal group, uncover its plans, expose its tricks and illegal methods of committing crimes. The infiltrator concludes the operation at his discretion in conditions that guarantee his safety.

In other words, the infiltrator's work in investigating and collecting evidence is considered successful when he has collected as much necessary and sufficient

³⁹- Fawzi Amara, *Interception of Correspondence, Recording of Voices, Taking Pictures, and Leakage as Criminal Investigation Measures*, 2008, p. 45.

evidence as possible to convict and punish the members of the infiltrated group⁴⁰.

On this basis, in order to achieve the desired objectives and the purpose for which the legislator decided on the method of infiltration, whether because of its effectiveness in detecting serious crimes or in preventing crimes, and in order to achieve social, security and economic stability, the legislator has authorised the adoption of those acts that are considered criminal acts under the law. However, the legislator has given them a legitimate character in order to prevent the spread of crime, which has become more widespread in societies, especially in recent times, due to technological advances that have led to the parallel development of criminal activities.

The operation concludes with a debriefing of the infiltrator, in which the details of the operation and the measures taken are documented. This report is signed by the judicial police officer in charge of the operation and filed with the case file, including the authorisation obtained from the public prosecutor or investigating judge.

Conclusion:

Through this study of the infiltration process, it is evident that despite its benefits in the context of judicial investigation to uncover crime, the practical implementation of infiltration remains limited due to various considerations. These include the practical complexities and the lack of adequate training to carry it out, which puts the lives of infiltrators at risk as they infiltrate criminal organisations.

On the basis of the analysis carried out, the following conclusions can be drawn with regard to infiltration:

- The application of infiltration techniques in financial crime, such as money laundering, is proving difficult.
- Restricting the identity of the infiltrator to the coordinating judicial police officer raises concerns, as any obstacle preventing the officer from providing information, such as his death, could lead to the failure of the entire infiltration operation.

⁴⁰- Fawzi Amara, *Ibid.*, p. 256.

- The lack of clear criteria defining the investigative situations that justify the use of infiltration can potentially lead to the arbitrary use of power, as the decision to authorise infiltration becomes subjective to the issuing authority

The Algerian legislator allows the infiltrator to continue the authorised activities and sets a necessary period for the cessation of infiltration activities in order to ensure the safety of the infiltrator. However, this period, which does not exceed four months, raises the question of the consequences of the infiltrator's actions if the period expires and he is unable to cease his activities, as it may not be sufficient to protect him. In addition, the infiltration process presents practical challenges, including the provision of necessary resources and funds for the infiltrator, such as accommodation and transport. Another challenge is the familiarity of local security forces, especially within criminal circles and in areas of low population density. Finally, the lack of local training and expertise to conduct the operation with caution and intelligence is an important aspect to be addressed.

In summary, while the infiltration process has theoretical advantages in judicial investigations to uncover crimes, its practical implementation faces various challenges and limitations. Further consideration and improvements are needed to ensure the effectiveness and safety of the infiltrator in such operations.

The study of a subject characterised by its modernity and complexity, at a time when individuals and their interests are under attack, requires the inclusion of specific proposals relating to infiltration as a specialised research and investigation method for emerging crimes. These proposals can be summarised as follows:

- The need for regulatory decrees that define the practical procedures for implementing the infiltration process, rather than relying on broad and vague boundaries that leave ample room for the discretionary powers of the judicial police, which may violate individual freedoms and rights at the expense of the public interest.
- Addressing the civil liability of the infiltrating agent in relation to all the obligations undertaken during the infiltration operation, which may have various consequences.
- Broadening the scope of crimes covered by infiltration to include other crimes such as kidnapping, hostage-taking and other crimes characterised by their seriousness and negative impact on individuals and society.

- Human resources are the cornerstone for the successful and effective conduct of research and investigation. It is therefore important to:

- Train individuals assigned to the operation through programmes that enhance their skills in investigating serious crimes, enabling them to conduct operations with a high degree of professionalism.

- Select competent security personnel to ensure that the tasks assigned to them match their abilities and motivations

- Unification of legal terminology that has the same meaning in national legislation, as defined by the legislator when using the term "infiltration" in Article 65 (repeated) 12 of the amended and supplemented Law 06/22 on Criminal Procedure and the term "penetration" in Article 56 of the Law 06/01 on Combating Corruption. This will avoid different interpretations and implications. 6. Allow the infiltrated agent to testify, taking into account the valuable information he possesses for the investigation. This will ensure both the effectiveness of the investigation and respect for the principle of transparency. This can be achieved through the use of technological devices that allow the witness to be questioned remotely or to be questioned by a lawyer in the same way, while keeping the witness's voice unknown through the use of such devices. In conclusion, the Algerian legislature has sought to use all legal means to punish and combat crime in order to protect the interests of individuals and society. This includes the provision of specialised investigative methods, such as infiltration, to combat crimes that take advantage of technological advances. The legislator has also established a number of restrictions and conditions that define the legal framework for the infiltration process, making it a productive and legally effective procedure.

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