



MINISTÉRIO PÚBLICO
PORTUGAL

PROCURADORIA-GERAL DA REPÚBLICA
GABINETE DE DOCUMENTAÇÃO
E DIREITO COMPARADO

Act No 101/2001 of 25 August 2001 (*updated version*)

**To make provision for covert operations undertaken for crime prevention and
criminal investigation purposes**

This Act contains the following amending provisions:

Act No 60/2013 of 23 August 2013

Act No 61/2015 of 24 June 2015

Pursuant to Article 161(c) of the Constitution of the Portuguese Republic, and to be effective as a general law of the Republic, the Assembly of the Republic enacts as follows:

Article 1

Object

- 1 - This Act lays down the legal regime of covert operations undertaken for crime prevention and criminal investigation purposes.
- 2 - Any operation conducted by criminal investigation officers or third persons acting under the supervision of the Criminal Investigation Police, under undisclosed capacity and identity, for the purpose of preventing or punishing the offences specified in this Act, shall be deemed to be a covert operation.

Article 2

Scope of application

Covert operations are admissible within the framework of prevention and punishment of the following offences:

- a) murder, provided that the offender's identity is unknown;



- b) offences against freedom and against sexual self-determination punishable with imprisonment for a term of more than five years *in abstracto*, provided that the offender's identity is unknown, or where minors under the age of 16 years old or other persons lacking legal capacity are expressly referred to as being the victims of the offence;
- c) offences relating to stolen-vehicle forgery and trafficking;
- d) slavery, illegal restraint and kidnapping or hostage-taking;
- e) trafficking in human beings;
- f) terrorist organisations, terrorism, international terrorism and terrorist financing;
- g) unlawful seizure of aircraft, vessel, railway train or road vehicle, or attempt on the safety of air, water, railway or road transport, punishable with imprisonment for a term of eight years or more *in abstracto*;
- h) offences committed with resort to bombs, grenades, explosive substances or devices, firearms and booby-trapped objects, nuclear, chemical or radioactive weapons;
- i) robbery at credit institutions, treasury offices and post offices;
- j) conspiracy to commit a crime;
- l) offences relating to illicit trafficking in narcotic drugs and psychotropic substances;
- m) laundering of money, other assets or proceeds;
- n) corruption, embezzlement and unlawful economic advantage in a business transaction and trading in influence;
- o) fraudulent receipt or embezzlement of subsidies or grants;
- p) economic and financial offences committed in an organised manner or by computer-related means;
- q) economic and financial offences committed at an international or transnational level;



- r) counterfeiting currency, securities, stamped value, postage stamps and similar securities or the passing thereof;
- s) offences relating to the securities market.

Article 3

Requirements

1 - Covert operations must be conducted in a way that serves the purposes of prevention and punishment of each of the offences identified *in concreto*, with a view, in particular, to collecting evidence, and in a manner commensurate not only with those purposes but also with the seriousness of the offence under investigation.

2 - No one may be compelled to take part in a covert operation.

3 - A covert operation in the scope of the inquiry requires the prior authorisation of the competent Public Prosecutor, its mandatory communication to the examining judge, and shall be deemed approved if no order refusing permission is issued within 72 hours.

4 - If the operation referred to in the preceding paragraph is conducted in the scope of crime prevention, it shall be incumbent upon the examining judge to give the required authorisation upon the proposal of the Public Prosecution Service.

5 - In the cases referred to in the preceding paragraph, the initiative shall rest with the Public Prosecutor at the Central Department of Criminal Investigation and Prosecution (DCIAP) and the decision shall fall to the judge sitting in the Central Examining Magistrate's Court.

6 - The Criminal Investigation Police shall report the undercover officer's operation to the competent judicial authority no later than 48 hours after the conclusion of the operation.



Article 4

Protection of officers and third parties

1 - The judicial authority shall only order that the report referred to in article 3(5) above be attached to the case file if, in its opinion, such measure is indispensable for evidential purposes.

2 - The assessment of such indispensability may be deferred until such time as the inquiry or the preliminary examining phase is concluded while, in the meantime, the report and a record thereof shall be kept by the Criminal Investigation Police.

3 - The competent judicial authority, *ex officio* or upon request of the Criminal Investigation Police and by means of a substantiated decision, may authorise the undercover officer who operated under a fake identity pursuant to article 5 of this Act to give evidence under such a fake identity in criminal proceedings related to the facts connected with the covert operation in which he/she was involved;

4 - Whenever the judge, on grounds of evidential indispensability, orders the undercover officer to attend a trial hearing, the provisions set forth in the second part of Section 87(1) of the Code of Criminal Procedure shall, at all times, be complied with, and the provisions set forth in Act No 93/99 of 14 July 1999 shall also apply.

Article 5

Fictitious identity

1 - For the purposes of article 1(2), criminal police officers may act under a fictitious identity.

2 - A fictitious identity shall be given by means of an order issued by the Minister of Justice, upon the proposal of the National Director of the Criminal Investigation Police.

3 - The identity mentioned in the preceding paragraph shall be valid for a period of six months, extendable for equal periods of time, and the criminal investigation



officer to whom a fictitious identity is given shall be authorised to act under the said fictitious identity during the mentioned period of time both throughout the specific investigative operation and, at a more general level, in every circumstance of legal and social transactions.

4 - The order giving the fictitious identity shall be classified as secret and must include a reference to the undercover officer's true identity.

5 - It shall be incumbent upon the Criminal Investigation Police to manage and promote the updating of fictitious identities given in accordance with the preceding paragraphs.

Article 6

Exemption from liability

1 - The undercover officer's conduct which, in the scope of a covert operation, amounts to the commission of preparatory or execution acts in any form of co-participation other than that of abettor or perpetrator of the offence shall not be punishable whenever due regard to the principle of proportionality, which requires the conduct to not go beyond what is necessary to achieve the objectives of the undercover operation, is ensured.

2 - If a prosecution is instituted for any act(s) committed under the provisions of this Act, the competent judicial authority must, immediately on learning of such a fact, request information from the judicial authority that issued the authorisation referred to in article 3(3).

Article 7

Repealing provisions

The following provisions are hereby repealed:

- a) Articles 59 and 59-A of Executive Law No 15/93 of 22 January 1993;
- b) Article 6 of Act No 36/94 of 29 September 1994.



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Passed on 17 July 2001

The President of the Assembly of the Republic, *Mr. António de Almeida Santos*

Enacted on 11 August 2001

For publication

The President of the Republic, *Mr. Jorge Sampaio*

Submitted to referendum on 16 August 2001

The Prime Minister, *Mr. António Manuel de Oliveira Guterres*