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LIMITS ON POLICE INVESTIGATIONS TO AVOID "PROSPECTING" IN INTERFERENCE MEASURES REQUESTED OF THE EXAMINING MAGISTRATE

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(Analysis of the requirements to be observed by the State Security Forces and Corps as part of police investigations to avoid "prospecting" in these investigations when asking the court authority for measures limiting fundamental rights to avoid the evidence obtained being declared null and void if it is found that it has been obtained without previously obtaining sufficient data that confirm the possibility that the police can objectively insist on data elements for the judge to approve the interference).

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1. Introduction.

It is now essential for each of us to receive training as part of our professional career to carry out our daily undertakings correctly. And it is clear proof of this spirit of policing that this journal has been produced to provide useful knowledge and information.

Therefore, in this spirit of investigation and to promote the improvement of training in police investigation, we could not touch on a better subject than the improvement and perfection of the preliminary police investigations, which is always the precedent for subsequently asking the judge for a measure to interfere with the fundamental rights of those investigated in relation to the commission of a criminal act.

The path or route of a police investigation inherently starts with police suspicions based on information from an informant or a complaint filed by a citizen, leading the State Security Forces and Corps to move their "chips" and make the first approaches to those identified as a result of this information/complaint to the State Security Forces and Corps. However, these police suspicions cannot, alone, give rise to a police request for the judge

to order interference. The investigation needs to be completed objectively. “Suspicion" is not a reason to go to a judge.

For the undertaking of this police investigation to correctly determine the development of the investigation leading to a strong result in obtaining evidence when the judge looks at interfering in the fundamental rights of the investigated person, it is necessary that the initial information that the police receive or take to investigate is complemented with an adequate, minimum and sufficient investigation that ensures the correct request is filed with the judge in the corresponding police official document to avoid the police action later being labelled as merely "prospective" and, as a result, having the evidence obtained declared null and void.

In these cases, the aim is for there to be no haste in resorting to a court request for interference until a "minimal" investigation has been carried out in addition to the information provided and received by the police.

So, what is the scope of this "minimal" investigation in order for the request to the judge by the State Security Forces to be considered valid? You wouldn’t be blamed for wondering.

This is the key to the issue in terms of clearly marking the difference between what would be a prospective investigation determining the invalidity of the evidence obtained and a sufficiency in the investigation to give rise to the validity of the order of the examining magistrate. And in these cases, each specific case in which the State Security Forces and Corps intervene should be the one that sets the requirements of this "minimum" investigation that must be carried out so that the information received by the police does not lead to the judge immediately requesting a wire tap, the placement of a GPS device, an entry and search warrant or any other measure that would entail interference with the fundamental rights of the person under investigation.

One of the basic investigative methods for the State Security Forces and Corps is wire tapping. However, for this to be approved, an initial phase of police investigation is necessary, leading to a kind of “***prudential exhaustion***” of the investigation. In these cases, as we have already indicated, we are faced with an individualisation of the specific case in order to evaluate what this investigative "exhaustion" has consisted of and whether “anything else” could have been done before taking the step of going to the judge to request the measure of interference in the tapping of the telephone of the person under investigation.

To this end, the key will lie in the "description" of what the initial suspicions were and what investigative measures were carried out by the State Security Forces and Corps in order to banish any doubts or suspicions of "haste" in the drafting of the police report asking the judge to order the interference measure. This consists of an analysis of the “sufficiency” and “exhaustion” of what they had to do and have actually done, to the point that efforts are made with the wording of the official document in relation to these parameters, as cited below:

1. Indication in the police report of the information or source that results in the investigation being launched.

2. Detailed description of the operation carried out when acting on the tip-off or complaint.

3. Appointment and identification of the members of the task force who carried out the investigation.

4. Specific investigative measures that were carried out, indicating the police badge numbers involved, the addresses where they were performed and the identity of the person under investigation.

5. Specific dates on which the investigative measures were carried out.

6. Reasons leading to the investigation coming to a “dead end” that resulted in the judge being asked to approve the interference measure.

Under these parameters, and using this data, the prospective nature of the investigation will have been avoided, given that enough will have been done to investigate up to the point where the next step requires court assistance for interference.

2. The key will be in motivating police work to avoid the prospective nature of police investigations.

Based on the above, it is clear that the key lies not only in the motivation of the judge’s order to interfere, but also in the motivation of the police report, which is the “key” that allows the judge to issue the order, meaning that if this report is not sufficiently motivated and does not describe in detail what was investigated, how it was investigated, who investigated and the "notitia criminis" that was sufficiently proven later with the investigation, it could be said that there are relevant shortcomings in the police report.

In these cases, the police will therefore start with circumstantial evidence, but must convert this into "objective evidence" to be presented to the judge and set out in the police report. To this end, the rulings of the Supreme Court 216/2018 of 8 May and 738/2017 of 16 November 2017 indicate that "The evidence that serves as a basis for a wire tap must be understood, therefore, not as the very establishment or expression of suspicion, but as objective evidence, which given its nature must be susceptible to subsequent verification, that allow suspicions to be conceived that can be considered reasonably founded in relation to the very existence of the act that is to be investigated and its relationship with the person directly affected by the measure (STS no. 635/2012, of 17 July).

They must be objective in a double sense:

1. Firstly, in that they are accessible to third parties, without which they would not be susceptible to control.

2. Secondly, that they must provide a real basis from which it can be inferred that the offence has been committed or is going to be committed, without these relying on subjective assessments about the person" (STC 184/2003, of 23 October).

And their content must be of such a nature that "it can be **assumed that someone intends to commit, is committing or has committed a serious offence or there is good reason or strong presumptions that offences are about to be committed"** (Rulings of

the European Court of Human Rights of 6 September 1978, Klass case, and 15 June 1992, Ludí case) or, in the terms of the current Art. 579 of the Criminal Procedure Law, in "evidence of obtaining by these means the discovery or verification of some important fact or circumstance of the case" (Art. 579.1 of the Criminal Procedure Law) or "evidence of criminal responsibility" (Art. 579.3 of the Criminal Procedure Law) (STC No. 167/2002, of 18 September)".

In short, the subsequent control of the decision that approved the measure must ensure that the judge was given objective data about the existence of the crime and the participation of the suspect as well as on the usefulness of the wire tap, in such a way that it is clear that it was necessary and justified (STS No. 635/2012, of 17 July)".

Consideration must be given to the fact that if the defendant's defence alleges that the judge's order is null and void due to deficiencies arising from the inadequacy of the police report, the analysis of judge's order shall consist of the following:

The court decision ordering a wire tap must justify the existence of the material prerequisites for the wire tap:

1) The objective data that may be considered as an indication of the possible commission of a serious criminal offence and

2) Evidence of the connection of the persons affected by the intervention with the actions under investigation. Evidence that is more than mere suspicions, but also less than the prima facie evidence required for prosecution.

To this end, the police should take care in the police report to ensure that the objective details of the investigation are detailed and numbered in great detail, and for this purpose, a section in the police report should be devoted to ***objective data,*** and then numbered, which would make it easier to identify and establish what this data is and, furthermore, its connection to the persons under investigation.

In other words, it is not just a question of the existence of objective data, but also of its connection to those under investigation and that it is expressed in such a way that it goes beyond the mere concept of "suspicion", and without requiring the absolute "exhaustion" of the investigation, which could even make the interference measure unnecessary.

Therefore, when questioned by the defence of the defendant subject to an interference measure by the judge as a result of the police investigation concluding with an official letter to the judge requesting the interference measure, action must be taken with a kind of "scalpel" that allows us to measure whether more could have been done, or whether what was done was sufficient from the perspective of the police investigation; hence, in this sense, it is necessary to describe the initial details that lead to the investigation being opened and the time and involved, to "measure" ex post the extent of the sufficiency and exhaustion of the investigation, without this last point being confused with greater demands made by the defence that the police investigation was prospective under the allegation that "something more could always be done in the investigation", as this is obvious.

However, what is important is not that it was evident that "more could have been done", but that "enough" was done. It is specifically on this measurement of "sufficiency" that the emphasis must be placed to correctly and fairly examine whether the investigation was not prospective.

It should also be noted that the initial "suspicions" of the police that an offence is being committed, or is going to be committed, goes beyond a subjective police suspicion, since, as stated in STC 197/2009, of 28 September 2009, "the relationship between the person under investigation and the offence is manifested in the suspicions that, as this Court has stated, are not only merely mental circumstances, but which, in order to be understood as founded, need to be supported by objective data, which must be objective in both senses of the word.

Firstly, in that they must be accessible to third parties, without which they would not be susceptible to control and secondly, in that they must provide a factual basis from which it can be inferred that the offence has been or will be committed, without this resorting to subjective assessments about the person".

Therefore, and on this basis, Article 588 bis b of the Criminal Procedure Law sets out the mechanics for the "Request for court authorisation", establishing that:

"1. The judge may order the measures regulated in this chapter ex officio or at the request of the Public Prosecutor's Office or the Judicial Police.

2. When the Public Prosecutor's Office or the Judicial Police request a technological investigation measure from the investigating magistrate, the request must contain:

1º. The **description of the act subject to investigation and the identity of the person under investigation or of any other person affected by the measure**, provided that this information is known (offence against public health).

2º. A detailed statement of the **reasons justifying the need for the measure** in line with the guiding principles established in Article 588 bis a, as well as the indications of criminality that have come to light during the investigation prior to the application for authorisation of the act of interference (justified in the official document).

3º. The **identification details of the person under investigation or accused** and, where applicable, of the means of communication used to enable the enforcement of the measure (those considered to be involved in the operations are identified).

4º. The extent of the measure, specifying its content.

5º. The investigative unit of the Judicial Police responsible for the intervention.

6º. The manner in which the measure is executed.

7º. The duration of the measure requested.

8º. The liable party that will carry out the measure, if known".

However, in the case in hand, special reference must be made, as has been explained, to the data relating to the source of the police knowledge, the event under investigation and its criminal nature, and the logic followed in the investigation, excluding its prospective nature. All of this must be provided in as much detail as possible to meet the requirement in relation to the grounds of the police.

3. It is not necessary for the police report to describe genuine evidence of a police charge in order to escape from the prospective nature of the police investigation.

The key will be in what we could call the ***"level of demand for the confirmation of the objective data of the police investigation",*** and as part of this framework, we must remember that what we cannot demand is the concurrence and establishment in the police report of ***authentic evidence against the accused***, but rather of sufficient objective data which must then be corroborated.

Thus, it is not a matter of subjective data or opinions from the police's perspective that someone "may be committing a crime", but minimum proof that they are committing a crime based on objective data that must always be verified.

Therefore, the Criminal Division of the Supreme Court in ruling 216/2018 of 8 May. 2018, Appeal No. 941/2017 stated that:

For the authorising order from the police to be considered valid, avoiding the prospective nature of the investigation, the following is required.

1. Adequacy of the description of operational activities.

It is true that in these cases, it is difficult for those under investigation by the agents of the authority to give evidence of their conduct and activity, as well as the fact that, given that these are investigations in which those under investigation adopt extreme caution, this makes monitoring operations difficult; however, the description of the evidence in the police report must be considered **sufficient** to warrant the issuing of the order. It is therefore necessary to analyse the "sufficiency" of the investigation, which is understood to be present in the Court's explanation.

2. *It cannot be required that the official document be "genuine evidence for the prosecution".*

It is clear that if, on the one hand, prospective investigations are not allowed under the authorising order, then **even in these cases it is not possible to demand "assurance"** in relation to the criminal **activity** of the persons under investigation, as this would make the wire tapping measure unnecessary.

It is **not a question of whether the official document constitutes full evidence of the prosecution**, but rather of determining the necessary weighting, as we have described, to conclude that these objective data were sufficient to generate reasonable suspicions.

3. "Acts of faith" cannot be required in the investigation from the police.

It must be noted that the basic data required for the police report are those that have been adopted to ensure the viability of the authorising order, which requires that ***there be "grounded suspicions***" **on specific and concrete factual data** on which the judge could form a rational judgement about the possible and probable existence of an offence that should be investigated with a wire tap.

Proof of the offence is not necessary, however, evidence is required that the police investigation is uncovering the crime, without the belief that any identity is of greater relevance.

What is necessary is a **reasonable explanation from the agents who carried out the investigation to explain the "sufficiency" of the investigation**, **rather than embarking on prospective tasks with insufficient and vague data**.

4. It is not valid to request a court ordered interference measure "to see whether it comes up with anything".

The prospective nature of an investigation would imply an absence of objective data, and the court ruling would only cover the verification of whether something can be "achieved", but without a prior objective basis that would support the court measure.

5. Need for evidence of specific "sufficient supporting data".

Furthermore, the Chamber of the Supreme Court in Ruling 272/2009 of 17 Mar. 2009, Appeal No. 11245/2007 indicated that:

"The requirement for a certain degree of specificity in the supporting data of a wire tap request is a necessary condition for the request addressed to the judge.

It is therefore a matter of making an effort to make the police officers' job more specific.

The evidence referred to in the request for authorisation must be more than mere suspicions, but also less than the prima facie evidence required for prosecution".

6. Information shall not be considered prospectively merely because the defence alleges other avenues could have been exhausted in the police investigation.

Consideration must be given to the fact that the allegation of a prospective police investigation cannot consist of an examination by the defence as to what other investigative steps could have been taken before going to the judge with the request for the interference measure. In other words, it is not about the defence examining the police's actions in relation to "what might have been missing", which is why this is a question of assessing the sufficiency of the investigation carried out and not what other measures could have been exhausted prior to the inference measure.

Thus, the test is about the "sufficiency" of the investigation. Therefore, for example, the police could have carried out follow-ups and surveillance on the persons under investigation, and could have monitored the place where the offence initially investigated was being committed, but they cannot demand a greater complement, or have

spent more days on surveillance, or demand the identity of more persons, since it is not a question of the quantity of the police investigative measures that support the viability of the investigation, but rather of the quality of the police investigation.

The key to rejecting the criticism of the prospective investigation lies in the fact that it does not require a large amount of evidence in order for the investigation to be considered valid and to escape a minimum prospection to approve court interference, but rather a minimum of sufficient evidence. Therefore, it is not possible to argue how far the investigation could have been extended in terms of content and for how much longer the investigation could have been extended. It is therefore not a question of "too little" or "too much", but of "enough" police investigative work.

4. References in the jurisprudence of the Supreme Court to prospective investigations.

Below we cite the rulings of the Criminal Chamber of the Supreme Court, where reference was made to the analysis of whether or not, when police officers carried out the prior investigation to record in the police documents requesting the measure of inference, they considered whether or not these investigations were prospective.

a. Supreme Court, Second Chamber, Criminal Division, Ruling 244/2021 of 17 March. 2021, Appeal No. 10472/2019

"As indicated in the rulings of this Chamber on 26 June 2000, 3 April and 11 May 2001, 17 June and 25 October 2002, or Ruling 849/2013, of 12 November, inter alia, the authorisation for wire tapping can be merged with the content of the respective police reports and it would not be logical for the judicial authority to open a parallel investigation in order to check the data provided by the Judicial Police."

If the judge considers that the data provided by the police is insufficient, they should refuse to impose the interference measure, although it is not possible in these cases for the judge to "investigate" whether or not this data is prospective. Furthermore, once the judge rejects the interference measure requested by the police officers, what the police must do is to complete and complement the investigation so that the police request can be resubmitted, but with a greater investigative basis and complying with the necessary objective data required to avoid the prospective nature that has been the reason for the examining magistrate's rejection.

b. Supreme Court, Second Criminal Chamber, Ruling 676/2019 of 23 Jan. 2020, Appeal No. 2235/2018

The issue in this case is whether an anonymous tip-off can lead to the launch of an investigation and it should be noted that a police investigation can indeed be launched as a result of an anonymous tip-off. The only thing is that this tip-off will have to be complemented by the police investigation in order to move away from the concept of a prospective investigation.

If, following this anonymous tip-off, the police were to ask the judge for the interference measure and the judge were to grant it, the evidence obtained would be considered null and void, because the anonymous complaint must be rounded off with a

police investigation that collects the information in the tip-off and the information contained in it without the complainant being identified, so that the police team can take objective data to the judge.

It indicates that:

"It is admissible to launch a criminal investigation on the basis of an anonymous tip-off, although a preliminary court check is required to launch the investigation. In any case, the absence of this control cannot result in the process being considered null and void since, as indicated in STS 958/2016, of 19 December, "the origin of the initial information is irrelevant, insofar as there is no record of any constitutional violation that could undermine the obtaining of the evidence". It is not the anonymous tip-off that can undermine or result in the invalidity of an investigation, but the breach of the rules of evidence".

"STS 11/2011, of 1 February, 1047/2007, of 17 December, 834/2009, of 16 July and 1183/2008, of 1 February and from their interpretation, it can be concluded that an anonymous tip-off does not prevent a criminal investigation but only requires an enhanced analysis to be taken into consideration that weighs the coherence and plausibility of the data."

c. Supreme Court, Second Criminal Chamber, Ruling 276/2021 of 25 Mar. 2021, Appeal No. 10652/2020

"The investigation will be merely prospective, based on mere hypotheses, "generic and blurred suspicions"."

If the content of the police report can be adjusted to this lack of accuracy, there is good reason to complain about the prospective nature of the police investigation and its inadequacy due to a lack of investigative work, which could have been based, for example, on a mere anonymous tip-off or an informant without any additional information. This is not the real corroboration of the data provided as real evidence, but "something more" that serves to verify that what is stated in the tip-off or by the informant contains elements of truth on account of the work of the police investigation that has established that there are reasons to ask the judge for this "bonus" of the interference measure to complement this police investigation.

d. Supreme Court, Second Criminal Chamber, Ruling 550/2013 of 26 Jun. 2013, Appeal No. 2001/2012

The analysis of the existence of a prospective investigation is based on a comparison of whether the information contained in the police report is sufficient to justify the interference measure:

1. Objective rather than subjective appraisals.

2. Sufficient for the purpose of the interference measure.

3. The persons under investigation are named as well as the investigative action, how it has been carried out and by whom.

This is an analysis of "investigative sufficiency".

"It is therefore a matter of determining whether, at the time of requesting and adopting the measure to tap a telephone line, objective data was brought to the attention of the judge, and taken into consideration by them, which made it possible to specify that this line was used by the persons suspected of committing the offence or those related to them, and that, therefore, it was not merely a prospective investigation, since the secrecy of communications cannot be disclosed to satisfy the general need to prevent or discover crimes or to dispel the subjective suspicions of those in charge of the investigation, since otherwise the constitutional guarantee would disappear.

On this basis, the Constitutional Court **has considered the mere affirmation of the existence of a prior investigation insufficient, without specifying what it consists of, or what the outcome of the investigation was, however provisional it may be, also asserting that specifying the offence being investigated, the persons being investigated, the telephones to be tapped and the time limit for the tapping** cannot make up for the fundamental lack of the expression of the objective indicative elements that could serve as support for the investigation, nor can the lack of this indispensable data be justified a posteriori by the success of the investigation itself.

The Court also emphasised that **"the idea of objective circumstantial evidence relates to the source of knowledge of the alleged offence, the existence of which may be known through it**. Hence, the circumstance involved in the alleged offence cannot serve as a source of knowledge of its existence. The source of knowledge and the circumstance in question cannot be one and the same".

e. Supreme Court, Second Criminal Chamber, Ruling 1005/2010 of 11 Nov. 2010, Appeal No. 11279/2009

Case law has been demanding that "objective data" be set out in the police report and that this data be numbered to make it possible for the judge to verify what this data consists of. Police "suspicion" is not accepted as is mere "conjecture". Specific and accurate data is required.

The ***precariousness of the evidence*** rules out the validity of the content of the police report.

Subjective hypotheses are not permitted either.

Thus, the Supreme Court indicated that:

"The omission of all this type of objective data demonstrates that **we are faced with the prototype of what is known as a prospective investigation, given that no factual elements are provided that would make it possible to establish a real objective basis that would provide certainty to a well-founded hypothesis that could therefore be subsumed under the concept of "vehement suspicion"**.

These were therefore mere conjectures, without any concise and individualised data that would allow for the development of any objective indications that would make it possible to speak of "well-founded suspicions" on a minimally consistent and real

empirical basis, or of what is understood by the ECtHR as "good reasons or strong presumptions" that the infractions are about to be committed.

If this absence of concrete data and the precariousness of the evidence suggest we were dealing with a "prospective" investigation based on mere subjective hypotheses, this was fully confirmed when, fifteen days later, the police became aware of the first wire taps (pages 14 et seq. of the case). It was then verified that the telephone belonging to "Aquilino" that had been tapped had nothing to do with the circumstances investigated, as this person does not appear again in the course of the entire investigation. The lack of accuracy of the data was evident in the subsequent information provided by the police and in the grounds of the ruling (page 13 of the decision).

The same applies to the group known as "Flequi", which is not mentioned again throughout the proceedings. Therefore, the ruling acknowledges that "Aquilino's connection to these events was not established, and revealed that it was not Flequi's group but another group, also of Roma ethnicity, that was involved" (page 13).

In the light of the above, it is clear that not only did the police fail to perform a supporting investigation and have minimally verifiable objective data to back it up, but that the core data provided was not true. And evidently, had any investigative work been undertaken (everything would seem to suggest it wasn't), there was no reflection of this in the police report.

To this end, the Constitutional Court argued in its ruling 197/2009, of 28 September, that "as this Court has already stated on numerous occasions, if knowledge of the crime results from previous police investigations, the police request must detail what these investigations consisted of and their results thereof, however provisional they may be at the time. The Court must logically have required these details before granting authorisation, without the specification of the offence subject to investigation, the persons being investigated, the telephones to be tapped and the duration of the wire tap making up for the fundamental failure to indicate the objective elements that could serve to support the investigation, nor can the lack of this indispensable data be justified a posteriori by the success of the investigation itself" (reason 5)."

f. Supreme Court, Second Criminal Chamber, Ruling 655/2020 of 3 Dec. 2020, Appeal No. 10275/2020

Prospective investigations cannot, for example, involve tapping telephones for an unlimited period of time, or without a specific and objective reason to "sample" the person under investigation to see if "there is something there". The prospecting of those under investigation would mean that phones could be tapped to obtain evidence without prior objective data, and on the basis of mere presumptions or suspicions, which is outside the rule of law.

"It is true that the principle of specification implies the prohibition of prospective interventions, whereby the public authorities intrude into the privacy of the suspect for the sole purpose of finding out whatever they can find. The principle of specification requires that the court decision to tap a telephone or communications is always related to the investigation of a specific offence, the elements of which are already outlined, at least at the indicative level allowed by the fledging nature of the proceedings (Art. 588 bis a 2)).

Given its validity "...it is not possible to approve a wiretap to facilitate the generic discovery of possible criminal offences, which would mean granting carte blanche authorisations; on the contrary, it is necessary to indicate the type of offence being investigated, which may sometimes even be modified subsequently, not by means of novation, but by addition of other criminal features (STS 393/2012, of 29 May).

Along these lines, STS 272/2017, of 18 April, in relation to the principle of specialisation, indicated:

"***the public authorities cannot intrude into the privacy of suspects, intercepting their communications, with the exclusive purpose or object of blindly investigating their conduct***, meaning that the court decision to intercept telephone communications must always be related to the investigation of a specific crime, at least in the indicative term".

5. Conclusions.

The following conclusions can be drawn:

1. The point is that there should be no haste in resorting to a court request for interference until a "minimum" complementary investigation has been performed in relation to the information provided and received by the police.

2. An initial phase of police investigation is necessary, resulting in the "***prudential exhaustion***" of this investigation.

3. The key will be in the "description" of what the initial suspicions were and what investigative measures were carried out by the State Security Forces and Corps to banish any doubts or suspicions of "haste" in the drafting of the police report requesting the judge to approve the interference measure. This consists of an analysis of the "sufficiency" and "exhaustiveness" of what they should have done and actually did.

4. It is not a question of the existence of objective data, but of its connection with the data under investigation and that they are expressed in such a way that they go beyond the mere concept of "suspicion", without requiring the absolute "exhaustion" of the investigation, which could even render the interference measure unnecessary.

5. The main aspect is not that it was evident that "more could have been done", but that "enough" was done. It is specifically on this measurement of "sufficiency" that the emphasis must be placed to correctly and fairly examine whether the investigation was not prospective.

6. The initial police "suspicion" that an offence is being committed, or is about to be committed, needs to be objectified beyond a subjective police suspicion.

7. It is not necessary for the police report to describe genuine police evidence to avoid the police investigation being considered prospective.

8. The key is going to be how "demanding the confirmation of the objective data of the police investigation" was, and within this framework, it must be remembered that what we

cannot demand is the concurrence and establishment in the police report of authentic evidence, but of sufficient objective data which must then be corroborated.

9. The description of operational activities must be adequate.

10. "Acts of faith" cannot be required in the investigation from the police.

11. It is not valid to request a court measure of interference “to see whether it comes up with anything”.

12. Information shall not be considered prospectively merely because the defence alleges other avenues could have been exhausted in the police investigation.

13. Police "suspicion" is not accepted, as this is mere “conjecture”. Specific and accurate data is required.

14. The precariousness of the evidence rules out the validity of the content of the police report.

15.- Subjective hypotheses are not permitted either.

16.- It is not admissible to **blindly investigate the conduct of a person under investigation.** Because this is what would happen if people's telephones were tapped in order to uncover the crime, but without prior objective data to determine that this crime may be being committed, and with circumstantial evidence that must be objectively specified in the police report.

17. Investigating by adopting interference measures with the fundamental rights of the investigated person ***"to see if..."*** is prospective.