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Search for Persons in Latvia and Abroad

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Abstract

People disappear for different reasons: someone avoids legal proceedings or punishment, another one has been kidnapped or killed, lost, or someone else wants to start their life again elsewhere. The aim of this publication is to evaluate the procedure of search for persons, providing an insight into the legal basis for starting search at a national level and describing the conditions for search for persons outside the borders of Latvia. In order to implement the intended, the author evaluates national and international legal norms that affect the process of searching for persons, describes possible problems and provides recommendations for their solution. Incorrect understanding and application of legal norms creates violations of rights. Respect for the rule of law, on the other hand, is a precondition for respect for human dignity, freedom, democracy, equality, and human rights. In performing the set tasks, the author used analytical, comparative, descriptive methods.

The study has led to conclusions that at a national level it is possible to initiate search for a person for various purposes within the framework of criminal proceedings, operational activities, administrative offence proceedings, and resoric test. However, the inclusion of data in the SIS is allowed only in the framework of criminal proceedings and operational activities. National regulations should provide for procedure for the implementation of Regulation 2018/1862 alerts for the purpose of “travel ban”. The imprecise legal provisions need to be improved to facilitate cooperation at a national and international level.

Keywords: information systems, police, search for persons, Schengen Information System.

Introduction

Many researchers have devoted their work to the problem of disappearing of people (Perkins & Roberts, 2011; Ferguson & Picknell, 2021). People disappear for different reasons. In most countries search for persons is a matter for the police (Harrington, Brown, Pinchin & Sharples, 2018; Ferguson & Gaub, 2021). Free movement has facilitated mobility and has accordingly changed the procedures of search for persons. The aim of this publication is to evaluate the procedure of search for persons, providing an insight into the legal basis for starting search at a national level and describing the conditions for search for persons outside the borders of Latvia. For the study, the author has used analytical, comparative and descriptive methods.

On December 23, 2019, the State Police of Latvia adopted the Internal Regulation No. 16 “Regulation on Search for Persons” (hereinafter – Internal Regulation of the State Police), which determines organisation of search, actions of officials, and procedures by which the police perform search for persons.

When starting analysis of the search process and procedures, the author firstly points out that, in the world practice, the “wanted person” is a person being searched for by the police in connection with a crime that has been committed (Reverso Dictionary, 2021).

Data on persons of such category is being included in the INTERPOL Criminal Information System, thus declaring search at an international level. In the Schengen Information System (hereinafter – SIS), this category of persons is referred to as persons wanted for arrest for surrender or extradition purposes. The competent authorities of Latvia are entitled to issue such an alert if the Prosecutor General’s Office accepts the European Arrest Warrant. Thus, the search process is limited to the Member States of the Schengen area. In the Internal Regulation of the State Police, the term “wanted person” means a suspect, accused, convicted person, a person who has suddenly and without obvious reason left their place of residence (hereinafter – missing person), and an unidentified person, the body of an unidentified person and a person summoned in search of a court or judge’s decision.

Thus, the procedural status of a person, physical characteristics, as well as a person’s activities are mentioned in this definition. Such practice should not be supported, because considering the category of persons, the search procedures and record keeping are different, as well as conditions to declare search for a person outside the borders of Latvia differ as well. The only unifying factor of the diversities listed is the need to find a person. Meanwhile, the search aims, objectives and the follow-up are different. The police action when determining the location of a person must be consistent with the search target set.

Nowadays the process of search for persons is not possible without the inclusion of data in information systems. It is a more important part of the process of search for persons at a national and more specifically at an international level.

1 Internal Regulation of Search for Persons

Describing national legal norms in the field of search for persons, it should be noted that on January 21, 2020, the Cabinet of Ministers of the Republic of Latvia adopted the Regulation No. 41 “Provisions on Information to Be Included in the Integrated Interior Information System for Location of a Person, Property or Document or a Person Identification or Identification of the Body of an Unidentified Person” (hereinafter – Regulation No. 41). Regulation No. 41 is issued pursuant to Section 382.¹, Paragraph three of the Criminal Procedure Law (*Kriminālprocesa likums*), Section 130, Paragraph three of the Law on Administrative Liability (*Administratīvās atbildības likums*), Section 8.¹, Paragraph three of the Operational Activities Law (*Operatīvās darbības likums*) and Section 14.², Paragraph three of the law “On Police” (*Likums “Par policiju”*). In all these cases the legislator provides for the right to disseminate information through the Integrated Interior Information System *to identify the location*. In turn, Regulation No. 41, as well as the Internal Regulation of the State Police set different objectives, namely identifying the location of a person, clarifying the actual place of residence of a person, determining the actual location of a person. Until now, the author has not been able to find legal discussions on compatibility of the search purpose, the category of a person to be searched for and further actions in the search process. However, taking into consideration the legal framework of the European Union concerning the procedure for search for persons, it should be noted that determining the location of a person and identifying the actual place of residence requires different police action. In addition, national regulation provides for a wider range of persons who can be searched for when disseminating data in information systems. In such cases, police action must be “in accordance with national laws and regulations”. Further, without applying for an absolute assessment, the procedure for search for persons at a national level and the conditions for search outside the borders of Latvia will be studied by the author.

It should be noted at the beginning of the study that the national regulation provides for search of persons within the framework of police resoric tests, within the framework of administrative violation cases, the framework of criminal proceedings, as well as within the framework of operational activities to identify the location. The relevant Regulation No. 41 determines the scope, basis, purpose of the data, the procedures for inclusion, use and deletion of the data, as well as the authorities who access to the included data shall be granted to. The legislator envisages that the Cabinet also determines the action when establishing a person regarding whom the information is included in the Integrated Interior Information System.

In turn, the Internal Regulation of the State Police determines the procedure for search for persons. It should be noted here that the Internal Regulation of the State Police was adopted on December 23, 2019, while Regulation No. 41 was adopted on January 21, 2020 and entered into force on July 1, 2020. Development of national framework involves adoption of Regulation (EU) 2018/1862 (Regulation (EU) 2018/1862 of the European

Parliament and of the Council of November 28, 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU, 2018) of the European Parliament and of the Council (hereinafter – Regulation 2018/1862), which must be applied in full at the latest from December 31, 2021. The subject of Regulation 2018/1862 is the conditions and procedures for entering and processing alerts in the SIS issued in respect of persons and objects for the purpose of police and judicial *cooperation in criminal matters*. Here is one of the conditions for announcement of persons in search outside the borders of Latvia.

2 International Search of a Person

Internal Regulation of the State Police provides that officials perform a search within the framework of criminal proceedings if there is information that a person may have committed a criminal offence; if the presence of a person is necessary for the performance of procedural activity; if the wanted person is accused of committing a criminal offence; to obtain information about the corpse of an unidentified person. Regulation No. 41 stipulates that the purpose of inclusion of information in the Integrated Interior Information System within the framework of criminal proceedings is to ensure the execution of a coercive measure or punishment related to deprivation of liberty; to ensure the execution of coercive measures of a medical nature; to identify the actual place of residence of a person for performance of procedural activity; to identify the location of a missing person for *performance of procedural activity*; to obtain information regarding the corpse of an unidentified person for performance of procedural activity. Accordingly, the purpose of clarifying the whereabouts of a missing person is not included in cases where no procedural activity is required.

Regulation 2018/1862, in turn, provides for the possibility to enter the SIS data on missing persons or vulnerable persons who need to be prevented from travelling. The purpose of the prohibition is that individuals may endanger themselves or they may threaten public order. In this case, action to protect is required. Simultaneously, such categories of persons are identified as children who are at risk of being abducted by their family members, children who are at risk of becoming victims of trafficking or terrorist activities; also, vulnerable adults who need to be prevented from travelling to protect them. At a national level, this shortcoming may disappear if such categories of persons are within the scope of the operator.

Regulation No. 41 provides that within the framework of the operational activity, an official may decide on the inclusion of data in the Integrated Interior Information System to clarify the actual place of residence of a person; to find a missing person and detect whether their health and life are not threatened; forcibly to transfer a person to a medical treatment institution or a place of care. Within the operational activity

the Internal Regulation of the State Police provides for search for a person who has been charged or convicted of a criminal offence in accordance with the law, or a foreign country has announced search for a person in the SIS or in the Interpol database or has issued a request for temporary arrest or extradition and it is required to perform operational activities; a separate task of the person directing the proceedings has been received or support must be provided in the search for a missing child; looking for a missing person. Accordingly, it can be stated that within the operational process there are the widest possibilities to include data in the Integrated Interior Information System. There is a tendency that family and civil law issues need to be addressed in a non-traditional way. At a national level, search for missing persons has been identified as one of the tasks of operational activities, but a category of persons such as the “vulnerable” has not been defined. Consequently, the task of “protecting persons against criminal offences” should be mentioned.

There are more opportunities to enter data into information systems at a national level. Within the framework of administrative offence proceedings, Regulation No. 41 provides for the purpose of clarifying the actual place of residence of a person. The Internal Regulation of the State Police provides for search in an administrative violation case to identify a person’s location or place of residence. Section 130 of the Law on Administrative Liability also mentions the purpose of clarifying the location. It is important to note here that clarifying the location and identifying the actual place of residence are different aims. Determination of the actual place of residence must be based on the facts, which means that the place of residence is real, right. On the other hand, identifying the location does not require proof of authenticity. It follows from the above that search for persons within the framework of an administrative violation case may be initiated, but the data is not allowed to be entered into the Integrated Interior Information System. Regulation 2018/1862 provides for a category of persons who are missing or vulnerable persons who need to be prevented from travelling. In this case, the purpose of entering information is to define where a person is, not their actual place of residence. On the other hand, one of the conditions for entering data in the SIS is that there must be a criminal process or operational activity process. Thus, the data entered in the Integrated Interior Information System within the administrative proceedings cannot be entered in the SIS.

Another national peculiarity is a resoric test. Within the framework of a police resoric test, a police officer performing it may decide on the inclusion of the relevant data in the Integrated Interior Information System to clarify a person’s actual place of residence; to find a missing person and define whether their health and life are not endangered; forcibly to transfer a person to a medical treatment institution or a place of care; to obtain information about a person who is unable to provide information about themselves in order to establish their identity; obtain information to identify the corpse of an unidentified person. Within the framework of a resoric test, the Internal Regulation of the State Police provides for the search for missing persons if no information has been obtained which indicates a possible criminal offence. In addition, within the framework of

a resoric test, the Internal Regulation of the State Police provides for search of a child who has left their place of residence, a childcare institution. The data entered in the Integrated Interior Information System in the framework of a resoric test cannot also be included in the SIS. The corresponding data on a missing child who has left their place of residence, a childcare institution, will not be entered in the SIS. Such situation counters the ideology of the SIS and should be remedied to comply with international obligations.

At a national level, the aim of finding a missing person and finding out whether their health and life are not endangered can be achieved within the framework of a police resoric test or operational activities by obliging the competent authorities to choose the correct process for entering the data in the SIS.

“International search of a person” is marked in the Internal Regulation of the State Police. It gives the right to the search initiator to enter a report on a person in the SIS to detect their whereabouts for performing procedural activity based on a decision of the person directing the proceedings or of the court and to identify the location of a missing person based on the decision of the search initiator. The objectives stated are clearly narrower than those set out in Regulation 2018/1862. This situation limits possibilities of the use of international mechanisms.

It is positive that the content of the search initiator’s decision has been agreed upon if an international search is initiated through the International Cooperation Department. However, the reasons of search are not in line with those set out in Regulation 2018/1862, they are narrowed. The information contained in the SIS enables search in the Schengen Member States.

A person is announced in international search through the Interpol. To do it, the person directing the proceedings should address the request on international search for a person to the Prosecutor General’s Office of the Republic of Latvia. The Prosecutor General’s Office, evaluating the request and acknowledging that it is a proportionate measure, sends a request to the International Cooperation Department of the Central Criminal Police Department of the State Police (hereinafter – ICD) to announce a person in international search. It should be noted that these are the officials of ICD who, after evaluating the available information, decide which search will be the most effective: report, circular, individual request. The Interpol reporting system was established in 1947. The first Red notice was issued in search of a person who killed a police officer (Interpol, Key dates, 2021).

Concerning search for persons, the Red notice provides for the aim of locating a person for the purpose of extradition; the Blue notice – to locate or obtain information about the person to be involved in the investigation; the Green notice – to warn that a person may threaten public order; the Yellow notice – to disseminate information for search for missing persons; the Black notice – to report on unidentified human corpses.

Another way that the Interpol announces a person in international search is a circular, or Diffusion report. In terms of content, it is similar to the Red notice. These are the Interpol officials who have the right to decide how to make a request. One of

the conditions for making a decision is that a person's possible whereabouts are known. In this case, the search must be restricted to a limited number of countries.

If no such restriction is specified in the request, the Interpol may decide which countries the Diffusion report is sent to Interpol's Rules on the Processing of Data, 2011 (2019). It should be noted that the Interpol has its own zoning of countries, and when specifying the addressee, not all the countries should be addressed, but the relevant zone.

Thus, if it is necessary to announce a person in international search, the Red notice must be used. On the other hand, knowing the possible location of a person the search circle can be narrowed. In certain cases, where the whereabouts of a person are known, the request for extradition is addressed to the country without the involvement of the Interpol General Secretariat.

It is important for police officers to know that there is always priority in comparison with reports (alerts) and the information exchange through the Interpol. This is especially important in cases where there is a discrepancy between reports (alerts) (European Union, 2013).

The search for persons with the support of the Interpol also envisages implementation of various projects and targeted operations. The European Union is also strengthening cooperation in searching criminals who have committed serious crimes. In 2010, with the support of the European Union funding European Network of Fugitive Active Search Teams (hereinafter – ENFAST) was established. Such cooperation form is also necessary, as the competent services set up fact sheets with the basic information on the Member States' legislation, police methods for tracing persons. ENFAST offers staff exchange programmes. There is an undeniable public contribution to the search for persons and a platform has been developed at www.eumostwanted.eu, where information on the most wanted criminals is published. This system is anonymised and operates on the principle of sending information; the message is received by the competent services, which are available 24/7 and ready to engage in the capture of criminals. The publicity of the site is also supported by the Europol, and shortly after its establishment, ten criminals were arrested with public support (Europol, 2016).

A human being is the core value of modern society. The reasons for disappearance of people are also changing, so it is worth considering the possibility of making greater use of over national resources in search for persons, especially in the case of the disappearance of minors.

Conclusions

It is not possible to determine exactly how many people are wanted for extradition, how many are missing and how many are being searched for due to some other reason. For example, in 2019, 62,000 Red notices were issued by the Interpol, and 40,322 alerts were included in the SIS with the requested action – arrest (alerts on persons wanted for arrest for surrender or extradition purposes). These figures show how relevant the search for

persons is. At a national level, it is possible to initiate search for a person for various purposes within the framework of criminal proceedings, operational activities, administrative offence proceedings, and resoric test. However, the inclusion of data in the SIS is allowed only in the framework of criminal proceedings and operational activities. National regulations should provide for procedure for the implementation of Regulation 2018/1862 alerts for the purpose of “travel ban”.

Regarding international search at a national level, there are no arrangements made for reporting to the Interpol notification system. Law enforcement officials from other law enforcement authorities except the State Police are not familiar with search methods and do not focus on them.

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