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THE PROCEDURE OF JUDICIAL REVIEW OF CERTAIN EVIDENTIARY MEASURES INTERFERING WITH FUNDAMENTAL RIGHTS IN CRIMINAL PROCEEDINGS

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Abstract

The study examines the procedure for reviewing, during the criminal investigation phase, motions seeking authorization of procedural actions that interfere with fundamental rights and freedoms. The analysis focuses on the role of the investigating judge as a guarantor of the legality and proportionality of such interferences within the framework of criminal procedure law.

The main investigative actions requiring judicial authorization are identified, including searches, bodily examinations, seizure of objects and documents, and compulsory placement in medical institutions for expert evaluation. The paper also addresses exceptions to prior judicial authorization, particularly in cases of flagrante delicto and urgent circumstances, emphasizing the necessity of an effective ex post judicial review.

The research highlights deficiencies in the current legal framework, notably the lack of clear requirements regarding the content of the prosecutor's motion and the reasoning standards of judicial rulings. In this context, the case law of the European Court of Human Rights is invoked, which requires the existence of genuine safeguards against arbitrariness and "relevant and sufficient" reasons for authorizing interferences.

Particular attention is given to the principle of proportionality, analyzed as a fundamental standard for assessing the necessity and legitimacy of procedural measures. The study argues for the explicit recognition of this principle within criminal procedural law.

In conclusion, the paper advances de lege ferenda proposals aimed at strengthening judicial control, ensuring consistency in practice, and maintaining a proper balance between the interests of criminal justice and the protection of fundamental rights.

Keywords: *criminal investigation, investigating judge, judicial authorization, evidentiary procedures, fundamental rights, interference, judicial control, proportionality, prosecutor's motion, search, flagrante delicto, urgent circumstances, ECtHR case law.*

PROCEDURA CONTROLULUI JUDICIAR AL ANUMITOR MĂSURI PROBATORII CARE ADUC ATINGERE DREPTURILOR FUNDAMENTALE ÎN PROCESUL PENAL

Abtract

Studiul analizează procedura de examinare, în faza urmăririi penale, a demersurilor privind autorizarea acțiunilor procesuale care implică ingerințe în drepturile și libertățile fundamentale ale persoanei. Accentul este pus pe rolul judecătorului de instrucție ca garant al legalității și proporționalității acestor ingerințe, în contextul reglementărilor Codului de procedură penală.

Sunt identificate principalele acțiuni de urmărire penală ce necesită autorizare judiciară, precum percheziția, examinarea corporală, ridicarea de obiecte și documente sau internarea în scop de expertiză. Totodată, sunt analizate excepțiile de la regula autorizării prealabile, în special în cazurile de infracțiune flagrantă și situații care nu suferă amânare, subliniindu-se necesitatea unui control judiciar ulterior efectiv.

Lucrarea evidențiază insuficiențele cadrului normativ, în special lipsa unor cerințe clare privind conținutul demersului procurorului și standardele de motivare a încheierii judecătorului de instrucție. În acest context, este valorificată jurisprudența Curții Europene a Drepturilor Omului, care impune existența unor garanții reale împotriva arbitrariului și a unor motive „relevante și suficiente" pentru autorizarea ingerințelor.

Un rol central îl ocupă principiul proporționalității, analizat ca standard esențial în evaluarea necesității și legitimității măsurilor procesuale. Se susține necesitatea consacrării exprese a acestui principiu în legislația procesual-penală.

În concluzie, studiul formulează propuneri de lege ferenda orientate spre consolidarea controlului judiciar, uniformizarea practicii și asigurarea unui echilibru efectiv între interesele justiției penale și protecția drepturilor fundamentale.

***Cuvinte-cheie**: urmărire penală; judecător de instrucție; autorizare judiciară; procedee probatorii; drepturi fundamentale; ingerință; control judiciar; proporționalitate; demersul procurorului; percheziție; infracțiune flagrantă; caz ce nu suferă amânare; jurisprudența CtEDO.*

Introduction. The procedure for authorizing investigative actions that entail interference with a person's fundamental rights and freedoms constitutes one of the most sensitive mechanisms of contemporary criminal proceedings. In a state governed by the rule of law, the balance between the need to detect and combat criminal offences and the obligation to respect fundamental rights—such as personal inviolability, the inviolability of the home, and the secrecy of communications—is achieved, in essence, through judicial review exercised by the investigating judge.

The provisions of the Criminal Procedure Code of the Republic of Moldova (hereinafter, the CPC) establish a general framework for such interferences without providing an exhaustive list of the evidentiary measures subject to authorization, instead opting for a substantive criterion focused on the nature of the rights affected. This legislative technique necessitates a systemic analysis of the relevant legal provisions, as well as of judicial practice and the standards developed in the case-law of the European Court of Human Rights.

At the same time, the existence of exceptions to the rule of prior authorization—*particularly in cases of a flagrant offence or situations not permitting delay*—raises complex issues concerning the delimitation of the powers of the criminal investigation bodies and the effectiveness of subsequent judicial review. From this perspective, a rigorous examination becomes essential of the procedure for seising the investigating judge, the content of the prosecutor's applications, and the criteria for assessing the legality and proportionality of such interferences.

This study seeks to analyse, in a systematic and critical manner, the procedure for examining applications for the authorization of evidentiary measures that interfere with fundamental rights at the stage of criminal investigation, highlighting both the normative gaps and the directions of development necessary for strengthening procedural safeguards.

Methods and materials applied. In the preparation of this study, research methods specific to the field of criminal procedure law were employed, enabling a comprehensive and coherent analysis of the procedure for authorizing investigative actions that interfere with fundamental rights.

The primary method used was the ***legal-textual analysis***, through which the provisions of the Criminal Procedure Code were examined and interpreted, particularly those governing the competence and authorization procedure exercised by the investigating judge. The case-law analysis ***method facilitated*** the use of relevant judicial decisions, both at the national and European levels, in order to highlight practical application issues and the standards concerning the justification of interferences with fundamental rights.

This approach was complemented by ***the systemic method***, which allowed for the correlation of general and special legal norms, with a view to identifying the regulatory framework applicable to various evidentiary measures.

In addition, the ***comparative method*** was employed, by reference to the standards developed in the case-law of the European Court of Human Rights, in order to assess the compatibility of national regulations with the requirements of the European Convention on Human Rights.

At the same time, a ***critical method*** was applied, aimed at identifying legislative gaps and practical deficiencies, as well as at formulating *de lege ferenda* proposals.

The empirical material of the research included relevant judicial practice, the case-law of the Constitutional Court of the Republic of Moldova, as well as the jurisprudence of the European Court of Human Rights concerning the protection of fundamental rights within criminal proceedings.

Discussions and results obtained. Article 301 para. (1) of the Criminal Procedure Code (CPC) does not expressly enumerate the investigative actions that require authorization by the investigating judge, instead placing emphasis on the rights that may be affected: "*Investigative actions involving the restriction of personal inviolability, the inviolability of the home, the secrecy of correspondence, telephone conversations, telegraphic communications and other communications, as well as other actions provided by law, shall be carried out with the authorization of the investigating judge*".

Given the general nature of this provision, the specific evidentiary measures (investigative actions) subject to prior judicial authorization must be identified across various provisions of the general part of the CPC, where the procedural law explicitly requires authorization by the investigating judge:

– **Body examination, as well as the collection of bodily discharge samples or other biological samples from the injured party, suspect, or accused without their consent** (Articles 60 para. (4/1); 64 para. (3/1); 66 para. (2/1); 119 paras. (1), (2) and 301 para. (3) CPC);

– **Search** (Article 125 para. (3) CPC);

– **On-site examination without the consent of the person whose right to the inviolability of the home is restricted** (Article 118 para. (2) CPC), as well as other investigative actions carried out at the domicile (Article 12 para. (2) CPC). "Examination, search, seizure of objects, and other procedural actions at the domicile (...) may be carried out only with the consent of the person residing at that address or on the basis of appropriate authorization" (Article 279 para. (3) CPC);

– **Exhumation of a corpse** (Article 121 CPC);

– **Seizure of objects and documents containing state, commercial, or banking secrets, as well as the collection of information regarding telephone communications** (Article 126 para. (2) CPC);

– **Placement of a person in a medical institution for the purpose of conducting a forensic medical or psychiatric examination** (Articles 152 and 301 para. (3) CPC).

Criminal procedural law provides, as an exception, the right and possibility for the criminal investigation body to carry out certain procedural actions that normally require authorization by the investigating judge, even in the absence of such authorization.

"The situations indicated are strictly limited by law, in order to prevent the criminal investigation body from committing abuses that may lead to serious violations of fundamental human rights and freedoms" [19, p. 113].

Article 301 para. (2) of the CPC specifies those investigative actions which, in cases of flagrante delicto and in situations not permitting delay, may exceptionally be carried out without prior authorization by the investigating judge—namely, search, on-site examination at the domicile, and the seizure of assets following a search.

Additionally, provisions of the Article 119 para. (2) CPC allow, in cases of flagrante delicto, the performance of a body examination without prior judicial authorization; however, the investigating judge must be informed within 24 hours of the action carried out, with the submission of the relevant case materials for the purpose of reviewing the legality of that measure.

Provisions of the Article 125 para. (4) CPC and Article 205 para. (5) CPC provides for the possibility of conducting a search and ordering the seizure of assets without prior authorization by the investigating judge not only in cases of flagrante delicto, but also in situations not permitting delay, as factual grounds. The legal basis in such cases is the reasoned order of the prosecutor.

The European Court of Human Rights criticized, in the case of V*arga v. Romania* (Judgment of 1 April 2008), the excessively broad powers of the prosecutor in ordering searches, as well as the lax and incomplete legal provisions, finding that the applicants did not benefit from the minimum level of protection against arbitrariness required under Article 8 of the Convention. "...in the absence of a prior judicial warrant, the search in question was not subject to any a priori control; the Court observes that, at the material time, the first two applicants did not benefit from any effective remedy enabling them to obtain a posteriori judicial review of the legality and justification of the search... Consequently, having been carried out in the absence of a warrant and, as appears from the record, without the presence of attesting witnesses, the search conducted by the prosecutor did not comply with the minimum safeguards required by law and was not subject to judicial control" (§73) [11].

In the context of the above, it is necessary to identify the meaning of the notions "*in case of a flagrant offence*", "*in case of flagrante delicto*", and "*in situations not permitting delay*".

According to Article 6 point 10) CPC, *flagrante delicto* is defined as an offence discovered at the moment of its commission or before its effects have been fully realized.

The definition provided in Article 513 CPC of a *flagrant offence* allows the conclusion that this notion has a broader scope compared to the notion of *flagrante delicto*, since a flagrant offence is not only an offence discovered at the moment of its commission, but also an offence whose perpetrator, immediately after its commission, is pursued by the victim, eyewitnesses, or other persons, or is caught near the place where the offence was committed with weapons, instruments, or any other objects that give grounds to presume his participation in the offence.

In accordance with Article 6 point 6) CPC, *a situation not permitting delay* is considered to exist where there is a real risk that evidence will be lost or destroyed, that the suspect or accused may hide in the premises concerned, or that other offences may be committed.

The investigating judge must be informed by the criminal investigation body, within 24 hours, about the performance of the actions indicated in Article 301 para. (2) CPC, as specified in Articles 119 para. (2), Art. 125 para. (4), and Art. 205 para. (5) CPC. For the purpose of review, the materials of the criminal case must be submitted, reflecting the expediency and legality of the investigative actions carried out without prior judicial control. Where sufficient grounds exist, the investigating judge, by a reasoned ruling, declares the investigative action lawful or, as the case may be, unlawful.

In this regard, "*the European Court has held that, in the absence of a search or seizure warrant, this deficiency may be offset by ex post facto judicial review of the legality and necessity of such a measure. However, such review must be effective* (Delta Pekárny A.S. v. the Czech Republic, *2 October 2014, §§ 92, 93;* Stoyanov and Others v. Bulgaria, *31 March 2016, § 128*)" [1, pt. 21].

The ECtHR concludes that, in the absence of a search warrant and of subsequent judicial review, the contested measure amounted to an interference with the applicant company's "*home*" which was not "*in accordance with the law*" within the meaning of Article 8 § 2 of the Convention [8, §§ 31-30; 9, §§ 11-13].

The legal grounds for initiating the procedure for the authorization of investigative actions are, in accordance with Article 304 para. (1) CPC, the reasoned order of the competent authority and the prosecutor's application requesting authorization to carry out the respective actions.

Both investigative practice and certain doctrinal sources [17, p. 9-133] indicate that there are no essential differences between the content of the orders and that of the applications.

The Constitutional Court "*notes that submitting applications to the investigating judge for the authorization of investigative actions, special investigative measures, and procedural coercive measures falls within the exclusive competence of the prosecutor*" [2, pt. 23].

According to one opinion, which we support, the prosecutor's application "*in itself also constitutes an act of seising the court*" [5, p. 163].

The provisions of Article 304 para. (2) CPC, indicate only the information that must be included in the descriptive part of the order, leaving without express regulation the content of the application.

According to Article 255 para. (4) CPC, one copy of the order initiating the authorization procedure remains with the investigating judge.

"*The order must contain reasoning demonstrating that the interference by state agents in the private life of the person is provided for by law, is necessary in a democratic society, pursues a legitimate aim, and complies with the principle of proportionality*" [16, p. 698].

“In order to ensure the confidentiality of the criminal investigation, the application is not submitted to the court registry, but directly to the investigating judge” [16, p. 699], *“who records it in a separate register”* [13, pt. 2.12].

“The investigating judge must be provided with safes in which procedural documents and other materials, registers, and other items requiring secure storage are kept under conditions of maximum confidentiality…” [18, p. 55].

“Materials concerning the authorization of investigative actions, as well as special investigative measures carried out with the authorization of the investigating judge, shall be submitted to the courts in sealed envelopes, on the surface of which shall be indicated the case number assigned by the authority that initiated the criminal case, the legal provision under which the application/material was prepared, the name and surname of the prosecutor who submitted the application/material, as well as a summary of the essence of the requested actions. The information on the sealed envelope shall not contain data that would allow the identification of the person or the object in respect of which the investigative actions were directed” [14, pt. 107].

“The court clerk and the judicial assistant working with the investigating judge, who have access to confidential information falling within the competence of the investigating judge, are equally responsible for maintaining confidentiality and are liable, in accordance with the applicable legislation, for its disclosure” [14, pt. 112].

In cases where the legalization of investigative actions is requested (Article 301 para. (2) CPC), i.e., ex post judicial review, the material submitted to the investigating judge must contain data justifying the performance of the respective procedural action without prior authorization by the investigating judge, namely data confirming the existence of a *flagrant offence*, *flagrante delicto*, or a *situation not permitting delay*.

“Pursuant to Article 305 para. (6) CPC, for the purpose of verifying the legality of procedural actions not permitting delay, carried out by the criminal investigation body or by operative investigative bodies, during their legalization, as the case may be, the person in respect of whom or at whose domicile the respective action was carried out shall be lawfully summoned to the court hearing, with the participation of the authors of the application” [13, pt. 2.10].

“The investigating judge must be informed, within 24 hours from the completion of the respective action, about the performance of procedural actions for which the authorization of the investigating judge is required but which were carried out without such authorization” [13, pt. 2.10].

The materials to be attached to the order and the application must confirm the existence of legal grounds and the necessity of carrying out or applying the respective actions or measures.

“Where necessary, the investigating judge is entitled to request the materials of the criminal case in order to verify the necessity of authorizing the investigative actions requested by the criminal investigation body and the prosecutor, since the legislation does not prohibit the investigating judge from examining all the materials of the criminal case” [19, p. 77].

The application concerning the performance of investigative actions, special investigative measures, or the application of procedural coercive measures is examined by the investigating judge within the territorial jurisdiction of the criminal investigation body [15, p. 699], in a closed hearing, with the participation of the prosecutor and, where appropriate, the criminal investigation officer. "No *record of the examination of such applications shall be drawn up*" [13, pt. 2.13].

The Constitutional Court "*notes that the examination of applications by the investigating judge at the place where the criminal investigation or special investigative measure is carried out, pursuant to Article 300 para. (4) CPC is closely linked to the territorial competence of the prosecutor who directly conducts or personally supervises the criminal investigation. Thus, the contested provision, by establishing the territorial competence of the investigating judge in exercising judicial review, refers to the place where the criminal investigation is carried out, within the territorial jurisdiction of the prosecutor's office*" [2, pt. 24].

The application submitted under Article 305 CPC may be withdrawn by the person who filed it—the prosecutor—or by the hierarchically superior prosecutor. "*The withdrawal of the application shall be made in writing and entails the immediate termination of the procedure by a ruling*" [16, p. 465].

In order to ensure the prompt execution of the requested actions, the application for the authorization of investigative actions and special investigative measures shall be examined on the day it is submitted.

"*For the prompt examination of the application, the investigating judge shall coordinate in advance the date and time of the court hearing*" [19, p. 78].

Within the prescribed time limit, the investigating judge opens the court hearing, announces which application will be examined, and verifies the powers of the participants in the proceedings, as well as any requests for recusal.

The prosecutor who submitted the application substantiates its grounds and reasons and subsequently answers the questions of the investigating judge and of the participants in the proceedings.

At the hearing for the examination of the application concerning the authorization of special investigative measures, a representative of the authority conducting special investigative activities may also participate, where it is deemed necessary to provide certain explanations.

The examination of the application begins with the verification by the investigating judge of the prosecutor's powers [18, p. 60].

If persons whose interests are affected by the application, or their defense counsel and representatives, participate in the hearing, they shall be given the opportunity to provide explanations and to examine all the materials submitted for the consideration of the application.

When the legalization of a search carried out in situations not permitting delay is requested, the prosecutor must summon the person at whose premises the search was conducted, and the investigating judge must verify whether measures have been taken to ensure that person's presence [4, p. 32, 33].

Following the assessment of the merits of the application, the investigating judge, by ruling, authorizes the performance of the investigative action or the special investigative measure, or the application of procedural coercive measures, or rejects the application.

"*The ruling of the investigating judge shall be delivered in a closed hearing*" [15, p.698].

"*Following judicial review, after hearing the submissions of the prosecutor and the summoned person, if present, and if sufficient grounds existed for carrying out the respective action without prior authorization by the investigating judge, the latter, by a reasoned* *ruling, declares the investigative action lawful; otherwise, the investigative action shall be declared unlawful*" [13, pt. 2.10].

The judicial ruling authorizing investigative actions shall indicate: the date and place of issuance; the name and surname of the investigating judge; the official and authority that submitted the application; the authority conducting the investigative actions; the purpose of carrying out such actions and the person to whom they relate; as well as a statement on the authorization or rejection of the action. Where objections are raised by the defense counsel, legal representative, suspect, accused, or defendant, the ruling must provide reasons for accepting or rejecting them. It shall also specify the duration for which the action is authorized, the official or authority empowered to execute the ruling, and bear the signature of the investigating judge, certified by the court's seal.

In the ECtHR judgment *Lisovaia v. Moldova*, it was noted that "*…the applicant argued that the ruling of the investigating judge authorizing the search contained no reference to the period for which the action was authorized, as required by Article 306 CPC*" [7, § 18].

In the same case, the ECtHR "*…observes that, in fact, the content of the search warrant issued by the investigating judge in the present case almost entirely replicated the police report and contained no information as to the reasons why the search of the applicant's apartment was believed to yield evidence (see: Mancevschi v. Moldova, § 48, 07.10.2008, and Golovan v. Ukraine, § 61, 05.07.2012). In these circumstances, the Court finds that the national authorities failed to fulfil their obligation to provide 'relevant and sufficient' reasons for issuing the search warrant. Consequently, there has been a violation of Article 8 of the Convention*" [7, § 21].

It cannot be excluded that, during the examination of the application, an exception of unconstitutionality may be raised, including ex officio, on the basis of a ruling [12, pt. 6].

In the case of *Blečić v. Croatia*, the ECtHR emphasized that, when state authorities are required to take into account the interests of various groups of citizens, they are inevitably compelled to choose those that prevail, without always identifying an ideal solution; this is the reason why, in this field, authorities enjoy a broader margin of appreciation. Each time the investigating judge authorizes the performance of investigative actions, he determines the extent to which the rights of both procedural subjects and other persons will be limited. In this context, the principle of proportionality acquires major relevance [9].

In the case of *Olsson v. Sweden*, the ECtHR held that an interference is considered necessary in a democratic society when it is based on a pressing social need and, above all, is proportionate to the legitimate aim pursued. The task of determining the necessity and proportionality of the interference resulting from an investigative action lies with the investigating judge, who is obliged to provide reasons for the decision in light of these principles derived from the ECtHR's case-law [10].

Criminal procedural law does not expressly require the application of the proportionality test in the content of rulings issued following the examination, in accordance with Article 305 CPC, of applications for the authorization or legalization of investigative actions. However, the principle of proportionality must be applied in all cases where the necessity of interference is established.

In this regard, we support the proposal to include proportionality as a principle of criminal proceedings. "*From the perspective of developing the principle of proportionality in national criminal procedure, certain conclusions may be formulated as recommenda-*

tions. The principle of proportionality must be applied in all cases where the necessity of interferences is established.... In this regard, and as a de lege ferenda proposal, we consider it necessary to recognize, as a principle of criminal procedure, that of proportionality between the interferences carried out and the aim pursued, which would imply determining the existence of a pressing social need that justified it" [3, pp. 64, 81].

Although Article 306 CPC does not expressly provide for it, as a rule, the rulings of the investigating judge authorizing investigative actions indicate that such decisions are subject to appeal by way of recourse within 15 days from the moment the person became aware of the respective ruling. This mention is legally justified by the provisions of Article 305 para. (8) CPC in conjunction with Article 437 para. (1) point 4) CPC. In such cases, the recourse is examined in accordance with the provisions of Title II, Chapter IV, Section 2, § 2 of the Special Part of the CPC.

Where the prosecutor's recourse against a ruling of the investigating judge refusing to authorize special investigative measures is upheld and the respective ruling is quashed, the Criminal Chamber of the Court of Appeal issues, in addition to its decision, a judicial warrant authorizing the special investigative measure requested by the prosecutor. Although the issuance of such a warrant does not expressly follow from the provisions of Article 439 CPC, appellate courts rely in such cases on the provisions of Articles 6 point 25/1) and Art. 12 para. (2) CPC.

Conclusions. The analysis of the procedure for examining applications for the authorization of investigative actions involving interference with fundamental rights highlights the decisive role of the investigating judge in ensuring the legality and legitimacy of criminal proceedings. Judicial review, whether exercised *a priori* or *a posteriori*, constitutes an indispensable safeguard against arbitrariness and potential abuses by criminal investigation bodies.

The current regulatory framework, although functional, is characterized by a certain degree of generality and normative fragmentation, particularly with regard to the content of the prosecutor's application and the standards for reasoning the rulings of the investigating judge. Practice demonstrates that, in the absence of clear requirements, there is a risk of formalization of judicial review, which is contrary to the standards established in the case-law of the European Court of Human Rights regarding the need for "*relevant and sufficient*" reasons.

Furthermore, the mechanisms allowing derogation from prior authorization, although justified by the need for оперативность, must be interpreted restrictively and subjected to effective subsequent judicial review, based on a genuine assessment of the existence of exceptional circumstances. In this context, the effectiveness of *ex post* review depends on the completeness of the materials submitted and on the active involvement of the investigating judge.

A central element emerging from the analysis is the necessity of strengthening the principle of proportionality in criminal procedure. Although implicitly recognized, its application is not uniform and it is not expressly enshrined as a fundamental principle. The explicit establishment of this principle would contribute to the harmonization of practice and its alignment with European standards, requiring a systematic assessment of the relationship between the interference carried out and the legitimate aim pursued.

In cases where authorization of investigative actions is refused, the possibility for the prosecutor to challenge the respective ruling by way of recourse within 15 days appears to be inappropriate/irrational, since, according to the current regulatory framework and judicial practice, the requirement of expediency—an indispensable condition in the procedure for authorization by the investigating judge and for the conduct of evidentiary measures—is adversely affected.

In light of the above, there are justified grounds for opting for a revision of the procedure of judicial review in criminal investigation, primarily through legislative means. The provisions of Article 312 CPC essentially regulate the procedure for judicial review of detention and alternative measures to detention provided for in Article 311 CPC. For this reason, the application by analogy of Article 312 CPC to the rulings indicated in Article 302 para. (2) CPC encounters difficulties in national judicial practice. The same considerations apply to the corresponding application of Articles 437-451 CPC (when examining recourses against rulings of the investigating judge), which are primarily intended for challenging criminal judgments delivered on the merits by first-instance courts.

Therefore, it is appropriate to introduce a distinct provision (for example, Article 313/1 CPC) regulating the procedure for recourse against the rulings provided for in Article 305 para. (8) CPC and Article 306 CPC, with a shortened time limit for recourse of three days, taking into account that the contested decisions are issued during the criminal investigation stage. An alternative would be to restructure the provisions of Article 312 CPC, adapting their content to cover recourses against other rulings of the investigating judge beyond those concerning pre-trial detention, house arrest, and alternative measures. A compromise solution would be to reduce to three days the time limit for recourse against the rulings of the investigating judge indicated in Article 473 para. (3/1) CPC.

In conclusion, the improvement of the normative framework and judicial practice in the field of authorization of investigative actions should focus on: clarifying the content requirements of applications and rulings, strengthening effective judicial review, strictly limiting exceptions to prior authorization, and expressly enshrining the principle of proportionality. Only under these conditions can a genuine balance be ensured between the efficiency of criminal investigation and the protection of fundamental rights.

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