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THE ROLE OF SPECIAL INVESTIGATIVE ACTIVITY IN THE NATIONAL SECURITY ARCHITECTURE OF THE REPUBLIC OF MOLDOVA: BETWEEN THE OBJECTIVE OF RESILIENCE AND THE DYSFUNCTIONALITY OF THE INVESTIGATIVE MECHANISM[1]

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Abstract

The adoption of Law No.249/2025 on the national security of the Republic of Moldova marks an important stage in the reconfiguration of the national security architecture, through the explicit integration of the field of public order and safety. In this context, special investigative activity, regulated by Law No.59/2012, gains increased relevance, extending beyond the traditional sphere of crime prevention and increasingly intersecting with the logic of national security.

The study examines the place and role of this type of activity within the new institutional and normative framework, highlighting the tensions generated by the coexistence of multiple legal regimes governing special investigations: extraprocedural crime prevention and public order enforcement, criminal proceedings, and intelligence and counterintelligence activities carried out by the Security and Intelligence Service. Although recent reforms suggest a tendency toward institutional integration, the analysis reveals the existence of systemic inconsistencies at the level of legal instruments, stemming from the absence of a coherent conceptual model regarding the use and evidentiary valorization of results obtained through intrusive measures.

The research demonstrates that, despite efforts to align with European standards, the Republic of Moldova risks developing a formal national security architecture insufficiently supported by effective operational instruments, particularly in the field of public order. This vulnerability arises from the fact that special investigative activity, as a primary tool for knowledge and anticipation, is subject to excessive procedural requirements more specific to the evidentiary phase than to the intelligence-gathering stage, thereby limiting its preventive effectiveness.

Keywords: national security, special investigative activity, resilience, criminal intelligence, evidence, Law No. 249/2025, normative incoherence.

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ROLUL ACTIVITĂȚII SPECIALE DE INVESTIGAȚII ÎN ARHITECTURA SECURITĂȚII NAȚIONALE A REPUBLICII MOLDOVA: ÎNTRE DEZIDERATUL REZILIENȚEI ȘI DISFUNCȚIONALITATEA MECANISMULUI INVESTIGATIV

Abstract

Adoptarea Legii nr.249/2025 privind securitatea națională a Republicii Moldova marchează o etapă importantă în reconfigurarea arhitecturii securității naționale, prin integrarea explicită a domeniului ordinii și securității publice. În acest context, activitatea specială de investigații, reglementată prin Legea nr.59/2012, capătă o relevanță sporită, depășind sfera tradițională a prevenirii criminalității și intersectându-se tot mai mult cu logica securității naționale.

Studiul analizează locul și rolul acestui gen de activitate în noua arhitectură instituțională și normativă, evidențiind tensiunile generate de coexistența mai multor regimuri juridice de reglementare a investigațiilor speciale: prevenirea extraprocesuală a criminalității și asigurarea ordinii publice, procesul penal și activitatea informativă și contrainformativă desfășurată de Serviciul de Informații și Securitate. Deși reformele recente sugerează o tendință de integrare la nivel instituțional, analiza pune în evidență existența unor incoerențe sistemice la nivelul instrumentelor juridice, determinate de lipsa unui model conceptual unitar privind utilizarea și valorificarea rezultatelor măsurilor intruzive.

Cercetarea demonstrează că, în pofida eforturilor de aliniere la standardele europene, Republica Moldova riscă să dezvolte o arhitectură formală de securitate națională insuficient susținută de instrumente operative funcționale, în special pe segmentul ordinii publice. Această vulnerabilitate derivă din faptul că activitatea specială de investigații, ca principal instrument de cunoaștere și anticipare, este supusă unor exigențe procedurale excesive, specifice mai degrabă fazei probatorii decât celei de colectare a informațiilor, ceea ce limitează eficiența sa preventivă.

Cuvinte-cheie: securitate națională, activitate specială de investigații, reziliență, intelligence criminal, probațiune, Legea 249/2025, incoerență normativă.

Introduction. Recent transformations of the normative framework in the field of national security of the Republic of Moldova reflect a significant reconfiguration of the architecture of this sector, driven by the need to adapt to new risks and to the requirements of European integration. The adoption of Law No.249/2025 on the national security of the Republic of Moldova [11], establishes an expanded vision of national security, integrating, alongside state security and national defence, the domain of public order and public safety.

In this context, special investigative activity, regulated by Law No.59/2012 [10], gains increased relevance, being the main operational-investigative instrument of the authorities responsible for preventing and combating risks to public order (Art. 2 letter d)). However, the integration of this type of activity into the national security architecture is not accompanied by a clear correlation at the level of legal instruments in the field of public order, which generates uncertainties regarding its role and limits in achieving national security objectives.

Despite the central role that special investigative activity should play in ensuring national security within the public order segment, official data for the years 2024-2025 reveal the profoundly limited nature of the practical applicability of this legal instrument. Although a certain level of activity outside criminal proceedings is observed, it is almost exclusively dominated by non-essential measures, such as information gathering, while intrusive measures, essential for the realization of the investigative function, have a marginal or even negligible share.

This situation indicates the existence of systemic dysfunctions, generated by the accumulation of high normative requirements, which lead not only to the restriction of the use of special investigative instruments, but also to their transformation into a predominantly informational mechanism, lacking real operational effectiveness. Under these circumstances, the imbalance between the need to ensure safeguards against abuses and the imperative of effective investigative intervention becomes evident.

In these conditions, a tension emerges between the formal role assigned to special investigative activity within the national security architecture and its actual functionality. While the strategic framework invokes the strengthening of prevention and early response capacities, the legal regime applicable to this instrument risks generating an implementation blockage, limiting its use in practice.

Starting from these premises, the article aims to analyse the normative framework relevant to the national security of the Republic of Moldova, in order to determine the place and role of special investigative activity within this architecture, as well as to assess its functionality in the context of the new security paradigm. In this regard, the study seeks to highlight the conceptual and legislative inconsistencies that affect the integration of this instrument at the practical level, to evaluate the impact of the dysfunctions of the normative framework on the fulfilment of the State's preventive function, and to outline directions for recalibrating the regulation, with a view to ensuring a functional balance between the protection of fundamental rights and the effectiveness of public order enforcement mechanisms.

In this context, the study proceeds from the hypothesis of the existence of a structural imbalance between the strategic level of national security regulation and the operational level of legal instruments, which tends to maintain and obscure the dysfunctional character of special investigative activity within the new architecture of national security.

Methods and materials applied. The methodology of the study includes traditional research methods: logical and grammatical interpretation, analysis and synthesis, deduction and induction, observation and comparison. Based on the analysis of relevant materials (national and foreign legislation, specialised literature, explanatory notes and opinions on draft laws, court decisions and recommendations, as well as other relevant materials), the corresponding conclusions and proposals are formulated.

I. The Normative Architecture of National Security. 1.1. The Context of Reform and the Evolution of the Concept of National Security. The reform of the normative framework in the field of national security of the Republic of Moldova, initiated in recent years, reflects a paradigm shift driven both by the evolution of the security environment and by the need to align with European standards in the governance of the security sector [12]. A central role in this transformation is played by the National Security Strategy of the Republic of Moldova 2023 [16], which proposes an integrated approach to security, based on prevention, institutional resilience, and interinstitutional coordination.

Within this logic, national security is reconfigured in a more functionally oriented manner, placing increased emphasis on risk prevention, the strengthening of institutional resilience, and the integrated management of threats. Although the previous normative framework also enshrined an extended vision of national security [3], including the security of the state, society, and citizens [4], recent reforms aim to transform this vision into a coherent operational model capable of ensuring the anticipation and proactive management of risks.

This orientation is also confirmed at the level of legislative substantiation, where the need to overcome a fragmented and reactive approach to security is emphasized, in favour of an integrated and systemic architecture, based on the clear delimitation of competences and the strengthening of interinstitutional coordination mechanisms [12].

At the normative level, this vision is enshrined through Law No. 249/2025 on the national security of the Republic of Moldova, which establishes national security architecture structured around three main components: state security, national defence, and public order and public safety [11, Art.3 para. (10)]. The explicit integration of the domain of public order and public safety into this architecture reflects the recognition that threats to security do not manifest exclusively at the strategic or military level, but also at the level of the day-to-day functioning of society, including through crime, social instability, or other forms of internal risk.

In this context, public order and public safety acquire a strategic dimension, going beyond the traditional framework of law enforcement activities and becoming an essential component of national security. Such an evolution necessarily entails the use of effective instruments for the prevention and anticipation of risks, capable of enabling early intervention before threats materialise.

However, the analysis of the normative framework reveals that this integration is carried out predominantly at the conceptual and institutional levels, without being accompanied by a corresponding correlation at the level of the legal instruments used to achieve these objectives. In particular, in the field of public order and public safety, the regulation is limited to identifying the competent authorities [11, Art.10], without explicitly reflecting the legal instruments through which these powers are exercised.

By contrast, in the area of state security, the legislator establishes a clearer correlation between the institutional mission and the instruments employed, expressly providing for the possibility of resorting to coercive measures, under the conditions of the law [11, Art. 8]. This difference in regulation highlights the existence of a non-uniform normative treatment, in which the integration of operational instruments is carried out selectively, only within certain components of national security.

Thus, a dissociation emerges between the declared intention of the legislator to build an integrated and coherent national security system and the normative solutions effectively adopted, which do not ensure a uniform integration of legal instruments across all relevant domains. This dysfunction is liable to affect the coherence and effectiveness of the system, insofar as the conceptual expansion of national security is not matched by a corresponding operational capacity.

1.2. The Place of Special Investigative Activity in the National Security Architecture. Although, at a declarative level, Law No.249/2025 establishes an integrated model of national security, a substantive analysis of operational mechanisms reveals a peripheral positioning of the special investigative activity regulated by Law No.59/2012. In the current configuration, this instrument no longer appears as a transversal pillar, but rather as a specialised one, whose effectiveness is conditioned by a “segregation of legal regimes” of investigation.

This fragmentation becomes visible through the emergence of multi-layered security architecture. On the one hand, intelligence and counterintelligence activity regulated by Law No.179/2023 is oriented towards a logic of strategic intelligence, adapted to threats against the state. On the other hand, the segment of public order and public safety (served by Law No.59/2012) remains closely tied to judicial rigor, which, although providing strong safeguards against abuses, may limit the speed of response at the stage of anticipation.

The complexity of this transition process is also reflected in the strategic analyses of the period. For example, the Independent Report on Security Sector Governance (PISA, 2024) [1] provides a valuable overview of institutional reforms and the missions of law enforcement authorities, emphasizing the democratization and efficiency of structures. The fact that such reference documents focus predominantly on the strategic vision, and the general framework of functioning of the Police or other services underlines precisely the technical and highly specialized nature of special investigative activity, which requires a distinct approach. At a time when legislation was undergoing profound transformations—through the clear delimitation of intelligence activity from public order activity—analytical efforts naturally focused on the "major reform" of the sector, leaving the refinement of operational instruments to legal doctrine.

A dysfunction that deserves attention within this architecture lies in the interpretation of Art. 20 para. (11) of Law No.59/2012, concerning the obligation to terminate the measure at the moment when the preparation of an offence is detected. This provision may generate a moment of informational discontinuity. During the interval required for the transition from the regime of Law No.59/2012 to that of the Criminal Procedure Code, a monitoring gap may occur precisely at the critical stage of the materialization of the risk.

Thus, the place of special investigative activity in the new architecture is one that calls for recalibration. Although it is a vital instrument for resilience, its current configuration as a "preliminary stage" of criminal proceedings, coupled with admissibility restrictions (Art. 93 para. 4 CCP), may explain the reluctance in its practical use, as illustrated by the absence of reported measures in 2024-2025.

II. The Functionality of Special Investigative Activity and the Challenges of the Normative Framework. 2.1. The Relevance of Special Investigative Activity in the New National Security Paradigm and the Issue of Its Effectiveness. The adoption of Law No.249/2025 on the national security of the Republic of Moldova marks a particularly important moment for the positioning of special investigative activity within the national security architecture. While following the 2023 reform this instrument was decoupled from the dimension of state security and predominantly reoriented towards the field of public order, the new law reintroduces, at least implicitly, its relevance for the achievement of the national security interest. Within this logic, special investigative activity can no longer be regarded as a mere auxiliary or pre-criminal procedural mechanism, but rather as an essential instrument for knowledge, prevention, and anticipation of risks to national security, particularly in the segment of public order and public safety.

This normative repositioning inevitably entails a reassessment of the conditions under which this instrument operates, from the perspective of its effectiveness. Insofar as national security is conceived, within the current strategic framework, as a continuous process of risk prevention and management, the efficiency of operational mechanisms becomes a determining factor in achieving the objectives established by the legislator.

However, official data for the years 2024-2025 indicate not so much the absence [14], but rather the evident dysfunctionality of special investigative activity in its current form [15]. At a general level, in 2025, a total of 5,220 special investigative measures were carried out outside criminal proceedings, an increase compared to 2024 (4,465), which might, at first glance, suggest a strengthening of investigative activity.

An analysis of the structure of these measures, however, reveals a profoundly unbalanced configuration, characterized by the overwhelming predominance of the measure of information gathering across all subjects involved in special investigative activity. Thus, in the case of the Ministry of Internal Affairs, this measure accounts for over 98% of the total measures authorized by the heads of specialized subdivisions (3,383 out of 3,446), a trend that is also observed at the level of other authorities, such as the National Administration of Penitentiaries or the National Anticorruption Center.

At the same time, the gap between preventive activity and criminal prosecution is highlighted by the contrast between the authorization regimes. While within criminal proceedings (under the Code of Criminal Procedure), in 2025, a total of 8,249 measures were authorized by prosecutors and investigating judges, outside criminal proceedings (under Law No. 59/2012), measures authorized by the investigating judge were ordered in only 16 cases, exclusively at the level of the Ministry of Internal Affairs. Moreover, measures authorized by the prosecutor outside criminal proceedings are entirely absent across all subjects. This striking disproportion highlights the exceptional—or even non-existent—character of the use of intrusive investigative instruments outside criminal proceedings.

Compared to 2024, there is thus a numerical increase in special investigative measures; however, this evolution does not reflect a diversification of the instruments used, but, on the contrary, an accentuation of the predominantly informational character of the activity, to the detriment of its operational dimension, which is essential for the fulfilment of the State's preventive function. Under these conditions, special investigative activity fails to achieve its specific purpose of preventing and anticipating risks, being, in fact, reduced to a limited informational instrument, lacking the capacity to intervene effectively in the dynamics of phenomena affecting public order and national security.

Such a situation cannot be qualified as a mere statistical indicator, but rather reflects a structural problem of the normative framework, in which the legal instrument intended for risk prevention is diverted from its essential function and integrated into a formal logic devoid of real practical effectiveness [5]. Consequently, a normative paradox emerges: on the one hand, the recently adopted strategic and legislative framework amplifies the importance of prevention and early intervention in the field of national security; on the other hand, the main instrument intended to achieve these objectives proves to be non-functional in practice. This dissonance raises fundamental questions regarding the adequacy of the normative framework to the real needs of the security system.

The legislator's attempts to remedy the situation, including through subsequent interventions in the normative framework, confirm that the 2023 reform generated effects that go beyond the initial intentions. In particular, one can observe the tendency to introduce high standards of protection of fundamental rights, inspired by the case-law of the European Court of Human Rights, without sufficient correlation with the specificity of the preventive phase and with the need to ensure the effectiveness of practical activity. In this regard, through the amendments brought to Law No.59/2012, the legislator intervened selectively in the normative framework, extending the scope of special investigative measures authorized by the investigating judge. Thus, by Law No.100 of 13 June 2025, two new letters were introduced to para. (3) of the Art. 27, concerning: (c) the detection and prevention of electoral fraud or illegal interference in the electoral process; (d) the detection and prevention of organized crime, acts of corruption and related offences, money laundering, and the financing of terrorism. These interventions confirm the attempt to recalibrate the normative framework in order to strengthen the preventive role of special investigative activity.

Under these conditions, the analysis of special investigative activity cannot be limited to the formal dimension of its regulation, but must also include an assessment of its functionality and of its impact on the achievement of national security. The dysfunctionality of this instrument affects not only the efficiency of crime prevention activities, but also has direct implications for the State's capacity to anticipate and manage risks to national security.

Therefore, the issue can no longer be reduced to a simple inefficiency of application, but reveals the existence of a structural dysfunction of the normative framework, which affects the real capacity of special investigative activity to contribute to the fulfilment of the State's preventive function. In this context, it becomes necessary to analyse the normative causes that have generated this situation, in order to identify directions for recalibrating the investigative mechanism.

2.2. The Causes of the Dysfunctionality of Special Investigative Activity. The dysfunctionality of special investigative activity, empirically evidenced by the structure and distribution of measures carried out outside criminal proceedings, is not accidental in nature, but results from a set of normative choices adopted within the 2023 reform. Although these interventions aimed at strengthening the guarantees of fundamental rights, they directly affected the functionality of the investigative mechanism, generating an imbalance between the informational and the operational dimensions of special investigative activity.

A first determining factor is the excessively restrictive configuration of the principle of proportionality, enshrined as an autonomous principle of special investigative activity, which has contributed to its predominantly informational orientation and to limiting the use of operational instruments. As demonstrated in the specialised literature, this legislative option not only introduced a criterion with insufficiently defined normative content, but also decisively influenced the entire regulatory framework, legitimising a series of additional restrictions which, cumulatively, have affected the functional balance of the investigative mechanism [6]. Instead of functioning as an instrument for balancing competing interests, proportionality has, in practice, become an additional filter of formal validation, with a discouraging effect on the initiation of measures.

A second essential element is represented by the regime governing the grounds for ordering special investigative measures, which does not correspond to the preventive logic of this type of activity [8, p. 357]. Conditioning interference on the existence of indications of an imminent danger or on a threshold close to the standard of reasonable suspicion creates a structural tension between the anticipatory nature of the activity and the requirements imposed by law. Consequently, the legal instrument becomes difficult to use precisely in the early stages, where intervention would be most effective.

According to the Art. 19 para. (1) point 1) letter (a) of Law No.59/2012, "*the grounds for ordering special investigative measures are substantiated indications suggesting suspicions regarding an imminent danger of harm against the person, public health, property, public order and public safety*". This legal formulation reveals the orientation of the normative framework towards situations of immediate risk, which raises issues of compatibility with the predominantly anticipatory and gradual nature of the phenomena targeted in the practice of special investigative activity. The use of the phrase "substantiated indications" is not accidental and does not equate either with mere operational information or with evidence in the procedural sense. The legislator operates here with an intermediate standard of knowledge, sufficient to justify limited interferences with fundamental rights, but insufficient to trigger the mechanisms of criminal proceedings. This solution is consistent with the preventive and security-oriented nature of special investigative activity carried out outside criminal proceedings.

In the specialised literature, this type of intermediate evidentiary standard is explained in opposition to the notion of "*reasonable suspicion*", it being emphasised that it may include informational elements which, although they do not reach the level of certainty or plausibility required for initiating criminal prosecution, nevertheless indicate the existence of a real risk [13]. Thus, it has been shown that simple anonymous information, data resulting from general risk analyses, or even rumours regarding the preparation of serious acts may not meet the criterion of reasonable suspicion, yet may constitute sufficient indications to trigger preventive investigative measures. In the same sense, it is not necessary for such indications to be fully concrete or individualized, it being sufficient that the totality of known facts and circumstances indicate the possibility of the commission—present or future—of serious unlawful acts [17, p. 84].

Another major factor of dysfunctionality is the impossibility of evidentiary use of the results obtained under Law No.59/2012 [9]. The rigid separation between the preventive phase and criminal proceedings has generated what has been described in doctrine as a "structural rupture" between operational activity and judicial activity [7]. Under these conditions, special investigative measures lose their practical purpose, being reduced to a limited informational role, without the possibility of contributing to the administration of justice. In this regard, through the amendments made in 2023 to the Criminal Procedure Code, the legislator expressly enshrined the limitation of the evidentiary use of the results of special investigative activity. Thus, according to Art.93 para. (4) CPC [2], "*the factual data obtained through special investigative activity may be admitted as evidence only in cases where they have been administered within criminal proceedings and verified through the means provided in para. (2), in accordance with the provisions of procedural law…*". This normative solution, in principle, excludes the use as evidence of results obtained outside criminal proceedings, reinforcing the separation between the preventive and the judicial dimensions of special investigative activity.

To the aforementioned factors is added the institution of notification of the targeted person, which, although justified from the perspective of safeguarding fundamental rights, may generate significant practical risks and an effect of institutional self-censorship. In the absence of clear mechanisms for protecting ongoing activities or of exceptions adapted to the specific nature of preventive activities, this obligation may discourage the use of special investigative measures in sensitive situations.

The legal regime of notifying the person subjected to special investigative measures is regulated in detail by Art. 22 para. (9)-(10) and Art. 22^1 of Law No.59/2012. According to these provisions, the prosecutor is obliged to inform the targeted person in writing, within no more than 15 days from the verification of the legality of the measure, the person subsequently having the right to access the documents related to the ordering, authorization, and execution of the measure. Notification may be postponed only under strictly limited conditions, such as the existence of a risk to life or health, the necessity to continue other special investigative measures, or the imminent initiation of criminal proceedings, for determined periods and under the control of the prosecutor. This regulation establishes a mechanism of post factum transparency which, although justified from the perspective of the protection of fundamental rights, may generate operational risks and a discouraging effect on the use of special investigative measures.

Considered individually, these elements may be justified by the need to align with European standards in the field of human rights protection. However, viewed as a whole, they generate a cumulative effect that exceeds the intended purpose, leading to overregulation capable of affecting the functional balance of the system. Instead of strengthening the effectiveness of prevention mechanisms, the current normative framework risks transforming special investigative activity into an instrument that is difficult to use and, consequently, marginalised in practice.

Under these conditions, the dysfunctionality of special investigative activity cannot be explained by a single factor, but rather by the interaction between multiple normative choices which, although coherent from a formal perspective, fail to ensure an adequate balance between the protection of fundamental rights and the necessity of guaranteeing national security.

Thus, the issue is no longer whether the normative framework provides sufficient safeguards, but whether it still allows, in practice, the exercise of the State's preventive function.

2.3. Directions for Normative Recalibration of Special Investigative Activity. The dysfunctions highlighted above cannot be remedied through isolated interventions or marginal adjustments, but require a fundamental reconsideration of the normative architecture of special investigative activity. The problem does not lie in the absence of legal safeguards, but in the manner in which they have been configured, generating a structural imbalance between the protection of fundamental rights and the functionality of prevention mechanisms.

In this context, a first direction of recalibration concerns the reconsideration of the status of the principle of proportionality. Its enshrinement as an autonomous principle, distinct from the respect for fundamental rights and freedoms, has proven not only redundant, but also liable to generate normative uncertainty. Within the logic of the European Convention on Human Rights, proportionality does not operate as an independent criterion, but as an intrinsic condition of the lawfulness of interference. Its artificial separation within Law No.59/2012 has led to an unjustified duplication of the control filter and to an accentuation of the defensive character of the regulation. A return to integrating proportionality within the principle of respect for fundamental rights would contribute to restoring the axiological coherence of the system.

At the same time, a reconfiguration of the grounds for ordering special investigative measures is required, which, in their current form, are anchored in a logic of reactive intervention centred on the notion of "*imminent danger*". This approach is difficult to reconcile with the preventive nature of special investigative activity, which, by definition, targets criminal processes in formation or latent manifestation. Maintaining a legal threshold close to the standard of reasonable suspicion limits the use of measures precisely in those early stages where their effectiveness is greatest. Therefore, the grounds for ordering should be recalibrated in accordance with the specific nature of this activity, through the establishment of a distinct evidentiary standard adapted to the anticipatory character of intervention.

Another essential direction concerns the legal regime of the results of special investigative activity. The rigid separation between the preventive and the criminal procedural dimensions has led to a paradoxical situation in which the State authorizes significant interferences with fundamental rights, but, in principle, excludes the use of the results obtained within criminal proceedings. In the absence of a coherent mechanism of valorisation, special investigative activity loses its practical purpose, being reduced to a limited informational role. In this regard, it is necessary to establish legal solutions that would allow the controlled integration of such results into criminal proceedings, with due respect for procedural safeguards and conventional standards.

In the same vein, the regime of notification of the targeted person requires careful reassessment. Although this institution responds to legitimate requirements of protecting fundamental rights and ensuring post factum transparency, the rigid manner in which it is regulated may generate significant risks in practice. The strict limitation of the grounds for postponement and the obligation to inform within a relatively short time frame may compromise ongoing investigative activities or create an effect of institutional self-censorship. A more flexible regulation, allowing adaptation to the specific circumstances of individual cases, would contribute to maintaining a functional balance between transparency and effectiveness.

Considered cumulatively, these elements do not represent mere imperfections of the regulation, but rather express a fundamental problem of the normative architecture. The current configuration of the principle of proportionality, of the grounds for ordering measures, of the regime governing the use of results, and of the notification mechanism reflects the same legislative option, oriented towards emphasising the defensive dimension of regulation, to the detriment of its operational functionality.

At the systemic level, this option is reflected in the manner in which the separation is configured between special investigative activity carried out outside criminal proceedings and that conducted within them. In itself, the distinction between a preventive regime, oriented towards knowledge and anticipation of risks, and a procedural regime, oriented towards the administration of evidence, is compatible with European models and corresponds to different purposes.

However, dysfunctions arise insofar as the preventive regime is subjected to requirements comparable to, or even more restrictive than, those applicable within criminal proceedings, which runs counter to its functional logic. Instead of providing a flexible framework adapted to early intervention, special investigative activity regulated by Law No.59/2012 is configured in a predominantly defensive manner, which discourages its use in practice.

Under these conditions, the direction of reform does not consist in a formal reunification of the two regimes, but in a recalibration of the relationship between them, by ensuring a functional balance that would allow preventive activity to operate on the basis of standards adapted to its nature, without compromising the fundamental guarantees of the rule of law.

In the absence of such recalibration, special investigative activity risks remaining a sophisticated normative instrument, but devoid of practical effectiveness, incapable of responding to the real requirements of national security in a democratic society.

Conclusions. The analysis conducted confirms the hypothesis of the study: despite the conceptual reconfiguration of national security through Law No.249/2025, the integration of special investigative activity within this architecture remains incomplete, being marked by systemic inconsistencies and a structural imbalance between the strategic and the operational levels of regulation.

The new national security paradigm, grounded in prevention and resilience, presupposes the existence of effective operational mechanisms capable of ensuring the anticipation and early management of risks. However, the normative framework applicable to special investigative activity is not configured to genuinely support this function, which generates dissociation between the declarative level of security policies and the actual capacity for intervention.

In this context, the identified structural imbalance does not directly generate the dysfunctionality of special investigative activity, but rather contributes to maintaining and relegating its non-functional character to the background. Thus, a pre-existing problem at the level of the normative framework is integrated into a strategic architecture that does not correct it, but, on the contrary, diminishes its visibility and systemic relevance.

This conclusion is also supported by the empirical data analysed, which show that special investigative activity is not absent, but operates in an unbalanced manner, dominated by predominantly informational measures and practically devoid of the use of effective investigative instruments outside criminal proceedings. Under these conditions, special investigative activity risks being marginalised, losing its role as an instrument for the prevention and anticipation of risks in the field of public order and public safety.

Therefore, the major risk lies not only in the existence of normative dysfunctions, but in the fact that these are absorbed into a national security architecture which, in the segment of public order and public safety, remains predominantly declarative and unsupported by functional operational instruments.

Under these circumstances, the recalibration of the normative framework of special investigative activity represents a structural necessity, with a view to restoring a functional balance between the protection of fundamental rights and the effectiveness of prevention mechanisms. This implies not only punctual adjustments, but a reconsideration of the manner in which legal instruments are integrated into the national security architecture, so that they no longer conceal existing dysfunctions, but effectively contribute to their correction.

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